

HOUSE JOURNAL

EIGHTY-SECOND LEGISLATURE, REGULAR SESSION

PROCEEDINGS

SEVENTY-SECOND DAY — MONDAY, MAY 9, 2011

The house met at 10 a.m. and was called to order by the speaker.

The roll of the house was called and a quorum was announced present (Record 848).

Present — Mr. Speaker; Aliseda; Allen; Alonzo; Alvarado; Anchia; Anderson, C.; Anderson, R.; Aycock; Beck; Berman; Bohac; Bonnen; Branch; Brown; Burkett; Burnam; Button; Cain; Callegari; Carter; Castro; Chisum; Christian; Cook; Craddick; Creighton; Crownover; Darby; Davis, J.; Davis, S.; Davis, Y.; Deshotel; Driver; Dukes; Dutton; Eiland; Eissler; Elkins; Farias; Farrar; Fletcher; Flynn; Frullo; Gallego; Garza; Geren; Giddings; Gonzales, L.; Gonzalez; Gooden; Guillen; Hamilton; Hancock; Hardcastle; Harless; Harper-Brown; Hartnett; Hernandez Luna; Hilderbran; Hochberg; Hopson; Howard, C.; Howard, D.; Huberty; Hughes; Hunter; Isaac; Jackson; Johnson; Keffer; King, P.; King, S.; King, T.; Kleinschmidt; Kolkhorst; Kuempel; Landtroop; Larson; Laubenberg; Lavender; Legler; Lewis; Lozano; Lucio; Lyne; Madden; Mallory Caraway; Margo; Marquez; Martinez; Martinez Fischer; McClendon; Menendez; Miles; Miller, D.; Miller, S.; Morrison; Muñoz; Murphy; Naishtat; Nash; Oliveira; Orr; Otto; Parker; Patrick; Paxton; Peña; Perry; Phillips; Pickett; Pitts; Price; Quintanilla; Raymond; Reynolds; Riddle; Ritter; Rodriguez; Schwertner; Scott; Sheets; Sheffield; Shelton; Simpson; Smith, T.; Smith, W.; Smithee; Solomons; Strama; Taylor, L.; Taylor, V.; Thompson; Torres; Truitt; Turner; Veasey; Villarreal; Vo; Weber; White; Woolley; Workman; Zedler; Zerwas.

Absent — Coleman; Gonzales, V.; Gutierrez; Walle.

The invocation was offered by Greg Bland, lead pastor, Pedernales River Fellowship, Spicewood, as follows:

Heavenly Father, I pray for every member of the Texas House of Representatives to experience your grace, wisdom, strength, and perseverance. I pray that their discourse, decisions, and actions will be guided by your spirit and be pleasing to you. I pray that you give them a unified vision and discernment of what is right, the resolve and conviction to follow where you clearly lead, and the courage to stay the course you mark out for them. I pray that the business conducted today by this body would be honorable and full of integrity and will ultimately lead to policies and actions that reflect your heart.

Lord, I pray for the families of those who serve in this body. I ask that you protect them, bless and uphold their marriages and their children. May each family represented here know your unmistakable presence and experience the fullness of your joy.

Together, we all pray for our state, for your favor and blessing on all our citizens, for growth in our economy, for the jobless to find employment, and for the helpless to be protected. Father, we are asking that your kingdom come and your will be done on earth, and specifically in Texas, as it is in heaven. Direct the decisions of this body to move Texas and its people toward the life and future you dream for us to enjoy. Forgive us all where we fall short. I pray all this in Jesus' name. Amen.

The speaker recognized Representative Eiland who led the house in the pledges of allegiance to the United States and Texas flags.

REGULAR ORDER OF BUSINESS SUSPENDED

On motion of Representative Workman and by unanimous consent, the reading and referral of bills was postponed until just prior to adjournment.

CAPITOL PHYSICIAN

The speaker recognized Representative Kleinschmidt who presented Dr. Kanaka Paladugu of Bastrop as the "Doctor for the Day."

The house welcomed Dr. Paladugu and thanked her for her participation in the Physician of the Day Program sponsored by the Texas Academy of Family Physicians.

(S. Miller in the chair)

HCR 139 - PREVIOUSLY ADOPTED (by Beck, Coleman, and Thompson)

The chair laid out and had read the following previously adopted resolution:

HCR 139, In memory of former Texas secretary of state Myra McDaniel.

On motion of Representatives Thompson and Dutton, the names of all the members of the house were added to **HCR 139** as signers thereof.

INTRODUCTION OF GUESTS

The chair recognized Representative Beck who introduced family members of Myra McDaniel.

BILLS AND RESOLUTIONS SIGNED BY THE SPEAKER

Notice was given at this time that the speaker had signed bills and resolutions in the presence of the house (see the addendum to the daily journal, Signed by the Speaker, House List No. 24).

HR 1753 - ADOPTED
(by Hardcastle)

Representative Hardcastle moved to suspend all necessary rules to take up and consider at this time **HR 1753**.

The motion prevailed.

The following resolution was laid before the house:

HR 1753, Congratulating Neil Evan Rinehart on his 60th birthday.

HR 1753 was adopted.

HR 1770 - ADOPTED
(by Branch)

Representative Branch moved to suspend all necessary rules to take up and consider at this time **HR 1770**.

The motion prevailed.

The following resolution was laid before the house:

HR 1770, Honoring His Holiness the Dalai Lama on the occasion of his visit to Southern Methodist University in Dallas on May 9, 2011.

HR 1770 was adopted.

LEAVE OF ABSENCE GRANTED

The following member was granted leave of absence for today because of illness:

Coleman on motion of Beck.

(Speaker in the chair)

RESOLUTIONS ADOPTED

Representative Dutton moved to suspend all necessary rules to take up and consider at this time **HR 1776 - HR 1778**.

The motion prevailed.

The following resolutions were laid before the house:

HR 1776 (by Dutton), Congratulating Jailen Malcolm Palmer of Houston on his graduation from Jack Yates High School.

HR 1777 (by Dutton), Congratulating Tralen Markuss Palmer of Houston on his graduation from Jack Yates High School.

HR 1778 (by Dutton), Congratulating Reginald Emmanuel Hebert, Sr., Rhanel Yvette Johnson, Aidsand F. Miles, Sr., and Aubry Louis Knight on their graduation from Kingdom Builders Bible Seminary.

The resolutions were adopted.

(Gutierrez now present)

UNFINISHED BUSINESS

The following bill was laid before the house as unfinished business:

CSHB 272 ON SECOND READING

(by Smithee, Chisum, Hancock, Margo, Sheets, et al.)

CSHB 272, A bill to be entitled An Act relating to the operation of the Texas Windstorm Insurance Association and to the resolution of certain disputes concerning claims made to that association; providing penalties.

CSHB 272 was read second time on May 7. A point of order was pending at the time of adjournment.

The point of order was withdrawn.

Representative Smithee moved to postpone consideration of **CSHB 272** until 7 p.m. today.

The motion prevailed.

**EMERGENCY CALENDAR
HOUSE BILLS
THIRD READING**

The following bills were laid before the house and read third time:

HB 274 ON THIRD READING

(by Creighton, Aliseda, Kleinschmidt, Jackson, Sheets, et al.)

HB 274, A bill to be entitled An Act relating to the reform of certain remedies and procedures in civil actions.

(Walle now present)

HB 274 - STATEMENT OF LEGISLATIVE INTENT

REPRESENTATIVE LUCIO: Representative Creighton, I haven't had an opportunity to speak to you about my one—well, I have many concerns—but my specific concern with this bill. A majority of the law I practice—and I am a practicing attorney—is family law. I believe it's your intention to not include the provisions of this bill in the Family Code; however, you have been very detailed and very thorough in how this bill will be implemented, and I would only ask you if we could have a conversation about amending your bill to exclude it from the Family Code. And the reason for it is, Representative Creighton, the family law process, the divorce process, is extremely different, in my opinion, than the rest of the litigation world. It's very passionate. We've done a great deal of things in our work here in Austin to change the structure of it and to allow help in that through para-facilitation, family mediators, whatever it may be. I think the process works very well, and I'm afraid that if it is somehow misunderstood—that some of the provisions of your bill be included in the family law process—it would change drastically our ability to get through a very emotional process. Could we at all talk about removing this from the Family Code?

REPRESENTATIVE CREIGHTON: Representative Lucio, we've got a provision in the bill where the supreme court may not adopt rules under this subsection that conflict with any provision of the Family Code. And then also under the interlocutory appeals section of the bill, where at the trial court level, if there is an interim question, and based on application from the parties, the judge can send it on up to get an answer at the appellate level for that question that's an issue. The reason why we have that trial court trigger, or gatekeeper provision, in there is for those exact situations. So, if that's not answering your question, give me some more specifics on what provision of the bill conflicts or—

LUCIO: I'm not sure what could potentially happen at the trial court level that would need to be addressed—that would cause concern and need to be addressed at the family law, in the family law. If you understand how family law case works—

CREIGHTON: I had a conversation on the floor right before we called the bill up with Representative Phillips regarding the same thing, and once we visited about that interlocutory appeals section and the gatekeeper provision in there on Family Code, he was more comfortable with that. So that's why I brought that up, but—

LUCIO: So, when you say trial court—I'm not—I don't know what you mean by trial court being a gatekeeper.

CREIGHTON: Tell me what—again—conversely, tell me what provision of the bill you're concerned about with regard to the Family Code.

LUCIO: The motion to dismiss, loser-pays, any of those things and how they apply, those are my concerns, not necessarily the appeal process.

CREIGHTON: Okay, well, that was my—

LUCIO: Because family law cases don't get—I mean—

CREIGHTON: That was my first answer to you. In the provision of the bill that deals with instructing the supreme court to promulgate rules for motion to dismiss practice, we have Civil Practice and Remedies Code, the Family Code, the Property Code, and the Tax Code outlined there that they're not—

LUCIO: Earlier you said the supreme court could not adopt rules that would be contradictory to the existing Family Code?

CREIGHTON: The expedited civil action, and the provisions for motion to dismiss, will not apply to—

LUCIO: Right. Because we said it takes 60 days for us before we can even grant a divorce, so that wouldn't apply.

CREIGHTON: If your intention was to get intent—

LUCIO: And what was the other expedited—what was the other?

CREIGHTON: The provisions that are covered, that are excluded from that? Is that what you're asking?

LUCIO: Yes. So, settlement offers, loser pays—would that apply to the Family Code under your bill?

CREIGHTON: Look, the only situation in Rule 12(b)(6), your motion to dismiss, where a nonprevailing party would possibly pay is if the judge allowed that. It's permissive, and it's only in the small number of cases where the case would actually be dismissed because there's no remedy at law whatsoever to govern the case. So, if you have a family law case where there is no law whatsoever that would be a remedy to the dispute which, I would assume, you hardly ever bring a case where there is no remedy at law. It's not even applicable to what you're talking about.

LUCIO: So, for instance, if we have a property—community property lawsuit as well as custody of children lawsuit, custody of children—I don't believe you can create a loser-pays structure based on who is granted custody of the children. But let's say the community property has a dollar value, and I am the petitioner and the defendant offers me \$150,000 monetary value, and that encompasses the house, the cars, retirement, so on and so forth. I decline that \$150,000 because I think I'm owed more, or my client is owed more, based on how the retirement structure is, the value of the home, so on and so forth, and it comes back that I'm only awarded \$135,000 by the jury. Would your bill affect that scenario to where I would have to pay attorneys' fees because there was a settlement offer on the community portion of a family law matter?

CREIGHTON: Representative Lucio, Chapter 42 excludes the Family Code and offers settlement.

LUCIO: Okay, so, what instances would your bill apply to the Family Code for intent purposes?

CREIGHTON: The only mention of Family Code is in excluding under the expedited claims section. Four different sections of codes, we have med mal, we have Family Code, we have Property Code, and Tax Code.

LUCIO: So, it's your intent to not affect the family law litigation process?

CREIGHTON: We're not making any changes to the current law other than the few specific changes that we've made here. Motion to dismiss practice—

LUCIO: Would that apply to the family law practice?

CREIGHTON: We don't stipulate one way or the other. We're going to rely on the supreme court to make suggested rules and guidelines for a motion to dismiss practice, and what we're doing is establishing what 42 other states in the federal courts enjoy successfully today.

LUCIO: So, which other states apply your intent for motion to dismiss in the family law sections—in their family law practices?

CREIGHTON: I don't have an answer to what other states do, but I'm not as much concerned with the other states and how they stipulated it. We're going to rely on the Texas Supreme Court to make those recommendations, and then after that branch of government makes those recommendations, if we have issues with their decisions, then this legislative branch can speak to those issues. Then I've

got some legislative intent that Representative Eiland and I are going to go through that I think will ease some of your concerns as we direct the supreme court.

REMARKS ORDERED PRINTED

Representative Lucio moved to print remarks between Representative Creighton and Representative Lucio.

The motion prevailed.

Amendment No. 1

Representative Creighton offered the following amendment to **HB 274**:

Amend **HB 274** as follows:

(1) In SECTION 2.01 of the bill, between "civil actions" and "in which" (page 2, lines 1-2), insert ". The rules shall apply to civil actions in district courts, county courts at law, and statutory probate courts".

(2) In SECTION 2.01 of the bill, strike "is more than \$10,000 but" (page 2, line 5).

(3) Strike SECTION 4.02 of the bill and renumber subsequent SECTIONS appropriately.

(4) In SECTION 5.02 of the bill, after "CONTRACTS." (page 5, line 3), delete "The" and insert "Unless otherwise provided in a written contract, the".

(5) In SECTION 5.03 of the bill, between "owed" and "must" (page 5, line 16), insert ", if any,".

Amendment No. 2

Representative Creighton offered the following amendment to Amendment No. 1:

Amend Floor Amendment No. 1 to **HB 274** (house committee printing) on page 1, line 9, between "action" and "that", by inserting "and defenses".

Amendment No. 2 was adopted.

AMENDMENT NO. 1 - STATEMENT OF LEGISLATIVE INTENT

REPRESENTATIVE EILAND: Mr. Creighton, as you have referenced, I do have some legislative intent language that I want to discuss. But first, you and I met on this bill, both with yourself and outside lawyers of your choosing to go through it, right?

REPRESENTATIVE CREIGHTON: Yes.

EILAND: And I had several amendments to the bill that were not acceptable, correct? That you were going to fight and not accept.

CREIGHTON: You had one amendment that was acceptable, and from there—you know, I'm doing my best, through working with many stakeholders, through subcommittees and committees, and all through this session to keep this bill as clean as possible so the senate can have a good bill to work with. And from there, I didn't accept any more than that one you and I visited on.

EILAND: Right, and you know that one of the concerns is, unlike back in 2003, on **HB 3** and **HB 4**, where we set up the offered settlement section of the code in Chapter 42 of the Civil Practice Remedies Code, in 42.005, we gave lots of legislative intent. We don't need to ask any questions about that, but one of the concerns about your bill, whereas back at that time we did give some specific legislative intent on the offer of settlement. In your bill, under section one, we basically give an instruction to the supreme court, "go make up a motion to dismiss practice," and give no restrictions, no guidelines, no limitations, right?

CREIGHTON: That's correct. This bill is obviously not of the magnitude that **HB 4** was in 2003, but you and I are going to be going through some intent now, and I think that will ease some of your concerns.

EILAND: Right, and so, one of the things is, unlike the federal rules of civil procedure, especially after the U.S. Supreme Court case of *Trombley*, we have a notice pleading under Chapter 45 of the Texas Rules of Civil Procedure and it's your intent that nothing in this bill be construed to change or impact the notice pleading requirements of Texas Rules of Civil Procedure 45, correct?

CREIGHTON: Correct, I don't have any intention to change any of the pleading requirements under Texas Rules of Civil Procedure 45.

EILAND: And the supreme court has previously set up a rules advisory committee which usually, before they adopt any rules, they will either propose a rule to the rules advisory committee or ask the rules advisory committee to propose a rule. And there's not a requirement in your bill that that be done, but as I understand, it is your intent that the supreme court will utilize and refer any proposed rule to the Supreme Court Advisory Committee?

CREIGHTON: That's correct. That is my intention, and I'm assuming from the legislative branch to the supreme court—asking the supreme court to promulgate these rules, they'll use the Supreme Court Advisory Committee anyway. Yes, that's my intention.

EILAND: And then, since we give no guidelines, there was consideration, as I understand it, adopting the California rules, the New York rules, or something similar to the federal rules. While that has not been placed into your bill, it's your intent that the supreme court consider the California rules, the New York rules, and the federal rules, since they have established a body of law, and practitioners know how to operate under them?

CREIGHTON: Yes.

EILAND: And then, I had an amendment that would exempt out from this motion to dismiss area, the Tax Code, the Family Code, the Subtitle A, Title 5 of the Labor Code, which is the workers' comp. laws, and Chapter 21 of the Property Code which is eminent domain and class actions. Because all of those items or codes have their own internal mechanisms, and that amendment was not acceptable, however, it is your intent that when the supreme court adopts these

rules, they not preempt existing law that provides for the process to be followed in the bringing of a suit, such as the Tax Code, the Family Code, workers' comp., eminent domain, and class action, correct?

CREIGHTON: Yes, I don't anticipate any conflict there with the rules that they promulgate. I'm comfortable with expressing intent to not conflict with the following.

EILAND: And then, Chairman Smithee had an amendment in the same area, because there's no real guideline to the supreme court about motion to dismiss and I believe there are two of his elements that are agreed to with regard to the intent, and that is motion to dismiss must be filed—no, I think the only one y'all agree to is that the non-movement must have an opportunity to re-plead, if re-pleading can cure the issue, is that correct?

CREIGHTON: That's correct. If it's determined by either party that there is no remedy at law, counsel should understand that by accepting the case, and there should be no problem at all requiring that to be the first responsive motion.

EILAND: Okay, and finally, an area that I brought to you as a concern, is a concern of mine in cases where money is not the only object, like libel, or slander, or false imprisonment, or a suit for money and specific performance, suit for money where the author would include a confidentiality clause. You could not agree with any intent as it relates to those items, correct?

CREIGHTON: Is your question there based on re-pleading to cure an issue that's outstanding?

EILAND: No, I'm sorry about that. Now, I'm moving over to section five where we talk about the shifting of the cost and the loser pays or the offer of settlement area. And I had concerns that we discussed, and I expressed about when it's not just about money and somebody would have to pay, and we could not agree to any intent language in that area.

CREIGHTON: I don't really want to speak to any intent on the offer of settlement provision itself. I mean we're simply making one small change there that levels the playing field for both parties, and I'd like to rely on the supreme court there, Representative Eiland.

REMARKS ORDERED PRINTED

Representative Eiland moved to print remarks between Representative Creighton and Representative Eiland.

The motion prevailed.

REMARKS ORDERED PRINTED

Representative Hughes moved to print remarks on **HB 274**.

The motion prevailed. [Please refer to the supplement to today's journal for the text of the debate on **HB 274**.]

Amendment No. 1, as amended, was adopted.

Amendment No. 3

Representative Eiland offered the following amendment to **HB 274**:

Amend **HB 274** by inserting on page 1 a preamble before Article 1 to include the following, "This act may be referred to as the Loser Pays and Sometimes Winners Pay Act."

(V. Gonzales now present)

Amendment No. 3 was withdrawn.

Amendment No. 4

Representative Lucio offered the following amendment to **HB 274**:

Amend **HB 274** on third reading as follows:

(1) On page 1, line 11, after the period, insert the following "Rules adopted under this subsection do not apply to an action under the Family Code."

(2) On page 1, line 20, after the period, insert the following "This section does not apply to an action under the Family Code."

(3) On page 2, line 20, after the period, insert the following "This section does not apply to an action under the Family Code."

Representative Creighton moved to table Amendment No. 4.

The motion to table prevailed by (Record 849): 80 Yeas, 65 Nays, 1 Present, not voting. (The vote was reconsidered later today, and Amendment No. 4 was adopted.)

Yeas — Aliseda; Anderson, C.; Anderson, R.; Aycock; Beck; Bohac; Bonnen; Branch; Brown; Button; Cain; Callegari; Carter; Chisum; Christian; Craddick; Creighton; Crownover; Darby; Davis, J.; Davis, S.; Driver; Fletcher; Flynn; Frullo; Garza; Geren; Gonzales, L.; Gooden; Hamilton; Hancock; Hardcastle; Harper-Brown; Hopson; Howard, C.; Huberty; Isaac; Jackson; Keffer; King, P.; King, S.; Kleinschmidt; Kolkhorst; Kuempel; Landtroop; Laubenberg; Lavender; Legler; Lewis; Lyne; Madden; Miller, D.; Miller, S.; Morrison; Murphy; Nash; Orr; Otto; Parker; Patrick; Paxton; Perry; Phillips; Pitts; Schwertner; Sheets; Sheffield; Shelton; Smith, W.; Smithee; Solomons; Taylor, L.; Taylor, V.; Truitt; Weber; White; Woolley; Workman; Zedler; Zerwas.

Nays — Allen; Alonzo; Alvarado; Anchia; Berman; Burkett; Burnam; Castro; Cook; Davis, Y.; Deshotel; Dutton; Eiland; Eissler; Elkins; Farias; Farrar; Gallego; Giddings; Gonzales, V.; Gonzalez; Guillen; Gutierrez; Harless; Hartnett; Hernandez Luna; Hilderbran; Hochberg; Howard, D.; Hughes; Hunter; Johnson; King, T.; Larson; Lozano; Lucio; Mallory Caraway; Margo; Marquez; Martinez; Martinez Fischer; Menendez; Miles; Muñoz; Naishtat; Oliveira; Peña; Pickett; Price; Quintanilla; Raymond; Reynolds; Riddle; Ritter; Rodriguez; Scott; Simpson; Smith, T.; Strama; Thompson; Turner; Veasey; Villarreal; Vo; Walle.

Present, not voting — Mr. Speaker(C).

Absent, Excused — Coleman.

Absent — Dukes; McClendon; Torres.

STATEMENTS OF VOTE

When Record No. 849 was taken, I was temporarily out of the house chamber. I would have voted no.

Dukes

I was shown voting yes on Record No. 849. I intended to vote no.

Kuempel

When Record No. 849 was taken, I was temporarily out of the house chamber. I would have voted no.

McClendon

When Record No. 849 was taken, I was temporarily out of the house chamber. I would have voted no.

Torres

Amendment No. 5

Representative Lewis offered the following amendment to **HB 274**:

Amend **HB 274** as follows:

(1) Insert the following ARTICLE 7 and renumber subsequent ARTICLES appropriately:

ARTICLE 7. DESIGNATION OF RESPONSIBLE THIRD PARTIES

SECTION 7.01. Section 33.004(e), Civil Practice and Remedies Code, is repealed.

(2) In SECTION 7.02(b) of the bill (as renumbered), replace "and (6)" (page 8, line 16) with "(6), and (7)".

Amendment No. 5 was adopted by (Record 850): 100 Yeas, 45 Nays, 1 Present, not voting.

Yeas — Aliseda; Anderson, C.; Anderson, R.; Aycock; Beck; Berman; Bohac; Bonnen; Branch; Brown; Burkett; Button; Cain; Callegari; Carter; Chisum; Christian; Cook; Craddick; Creighton; Crownover; Darby; Davis, J.; Davis, S.; Driver; Eissler; Fletcher; Flynn; Frullo; Garza; Geren; Gonzales, L.; Gonzalez; Gooden; Guillen; Hamilton; Hancock; Hardcastle; Harless; Harper-Brown; Hartnett; Hilderbran; Hopson; Howard, C.; Huberty; Hughes; Hunter; Isaac; Jackson; Keffer; King, P.; King, S.; Kleinschmidt; Kolkhorst; Kuempel; Landtroop; Larson; Laubenberg; Lavender; Legler; Lewis; Lozano; Lyne; Madden; Margo; Miller, D.; Miller, S.; Morrison; Murphy; Nash; Orr; Otto; Parker; Patrick; Paxton; Perry; Phillips; Pitts; Price; Riddle; Ritter; Schwertner; Scott; Sheets; Sheffield; Shelton; Simpson; Smith, T.; Smith, W.; Solomons; Taylor, L.; Taylor, V.; Torres; Truitt; Weber; White; Woolley; Workman; Zedler; Zerwas.

Nays — Allen; Alonzo; Alvarado; Anchia; Castro; Davis, Y.; Deshotel; Dukes; Dutton; Eiland; Farias; Farrar; Gallego; Giddings; Gonzales, V.; Gutierrez; Hernandez Luna; Hochberg; Howard, D.; Johnson; King, T.; Lucio;

Mallory Caraway; Marquez; Martinez; Martinez Fischer; McClendon; Menendez; Miles; Muñoz; Naishtat; Oliveira; Pickett; Quintanilla; Raymond; Reynolds; Rodriguez; Smithee; Strama; Thompson; Turner; Veasey; Villarreal; Vo; Walle.

Present, not voting — Mr. Speaker(C).

Absent, Excused — Coleman.

Absent — Burnam; Elkins; Peña.

STATEMENT OF VOTE

I was shown voting no on Record No. 850. I intended to vote yes.

Castro

Amendment No. 6

Representative Hilderbran offered the following amendment to **HB 274**:

Amend **HB 274** (house committee report) by adding the following:

SECTION _____. Title 6, Civil Practice and Remedies Code, is amended by adding Chapter 148 to read as follows:

CHAPTER 148. APPLICATION OF FOREIGN LAWS; SELECTION OF FOREIGN FORUM

Sec. 148.001. DEFINITION. In this chapter, "foreign law" means a law, rule, or legal code of a jurisdiction outside of the states and territories of the United States.

Sec. 148.002. DECISION BASED ON FOREIGN LAW. A ruling or decision of a court, arbitrator, or administrative adjudicator on a matter arising under the Family Code may not be based on a foreign law if the application of that law would violate a right guaranteed by the United States Constitution or the constitution or a statute of this state.

Sec 148.003. CHOICE OF FOREIGN LAW OR FORUM IN CONTRACT.
(a) A contract provision providing that a foreign law is to govern a dispute arising under the Family Code is void to the extent that the application of the foreign law to the dispute would violate a right guaranteed by the United States Constitution or the constitution of this state.

(b) A contract provision providing that the forum to resolve a dispute arising under the Family Code is located outside the states and territories of the United States is void if the foreign law that would be applied to the dispute in that forum would, as applied, violate a right guaranteed by the United States Constitution or the constitution of this state.

SECTION _____. (a) Section 148.002, Civil Practice and Remedies Code, as added by this Act, applies only to a ruling or decision that becomes final on or after the effective date of this Act. A ruling or decision that becomes final before the effective date of this Act and any appeal of that ruling or decision are governed by the law in effect immediately before the effective date of this Act, and that law is continued in effect for that purpose.

(b) Section 148.003, Civil Practice and Remedies Code, as added by this Act, applies only to a contract entered into on or after the effective date of this Act. A contract entered into before the effective date of this Act is governed by the law in effect immediately before that date, and that law is continued in effect for that purpose.

SECTION _____. This Act takes effect September 1, 2011.

Amendment No. 6 was adopted by (Record 851): 112 Yeas, 31 Nays, 2 Present, not voting.

Yeas — Aliseda; Anchia; Anderson, C.; Anderson, R.; Aycock; Beck; Berman; Bohac; Bonnen; Branch; Brown; Burkett; Button; Cain; Callegari; Carter; Chisum; Christian; Cook; Craddick; Creighton; Crownover; Darby; Davis, J.; Davis, S.; Driver; Eiland; Eissler; Elkins; Fletcher; Flynn; Frullo; Garza; Geren; Gonzales, L.; Gooden; Guillen; Hamilton; Hancock; Hardcastle; Harless; Harper-Brown; Hilderbran; Hopson; Howard, C.; Huberty; Hughes; Hunter; Isaac; Jackson; Johnson; Keffer; King, P.; King, S.; King, T.; Kleinschmidt; Kolkhorst; Kuempel; Landtroop; Larson; Laubenberg; Lavender; Legler; Lewis; Lozano; Lucio; Lyne; Madden; Margo; Menendez; Miller, D.; Miller, S.; Morrison; Murphy; Nash; Oliveira; Orr; Otto; Parker; Patrick; Paxton; Perry; Phillips; Pickett; Pitts; Price; Raymond; Riddle; Ritter; Schwertner; Scott; Sheets; Sheffield; Shelton; Simpson; Smith, T.; Smith, W.; Smithee; Solomons; Strama; Taylor, L.; Taylor, V.; Thompson; Torres; Truitt; Villarreal; Weber; White; Woolley; Workman; Zedler; Zerwas.

Nays — Allen; Alvarado; Burnam; Castro; Davis, Y.; Deshotel; Dukes; Dutton; Farias; Farrar; Gallego; Gonzales, V.; Gonzalez; Gutierrez; Hernandez Luna; Howard, D.; Mallory Caraway; Marquez; Martinez; Martinez Fischer; McClendon; Miles; Muñoz; Naishtat; Quintanilla; Reynolds; Rodriguez; Turner; Veasey; Vo; Walle.

Present, not voting — Mr. Speaker(C); Hartnett.

Absent, Excused — Coleman.

Absent — Alonzo; Giddings; Hochberg; Peña.

STATEMENTS OF VOTE

I was shown voting no on Record No. 851. I intended to vote yes.

Castro

I was shown voting no on Record No. 851. I intended to vote yes.

Gallego

I was shown voting no on Record No. 851. I intended to vote yes.

Gonzalez

I was shown voting yes on Record No. 851. I intended to vote no.

Lozano

I was shown voting no on Record No. 851. I intended to vote yes.

Muñoz

I was shown voting no on Record No. 851. I intended to vote yes.

Quintanilla

Amendment No. 7

Representative Gutierrez offered the following amendment to **HB 274**:

Amend **HB 274** on third reading on page 4, by striking lines 25 through 27 and substituting the following:

- (6) killed or injured stock;
- (7) a sworn account; or
- (8) an appeal to the court under Section 11.43, Tax Code, or an appeal to the court of a determination of an appraisal review board on a motion filed under Section 11.45, Tax Code ~~[an oral or written contract]~~.

Amendment No. 8

Representative Gutierrez offered the following amendment to Amendment No. 7:

Amend the Gutierrez amendment to **HB 274**, on third reading, by adding the following appropriately numbered ARTICLE to the bill and renumbering subsequent ARTICLES and SECTIONS of the bill accordingly:

ARTICLE _____. CONTESTED TAX APPRAISAL COSTS

SECTION _____. In an action contesting a tax appraisal a tax payer who prevails is entitled to an award of costs and attorney's fees. If the appraisal district or taxing authority prevails the appraisal district or taxing authority is not entitled to costs and attorney fees.

Amendment No. 8 was adopted.

Representative P. King moved to table Amendment No. 7, as amended.

The motion to table was lost by (Record 852): 62 Yeas, 80 Nays, 1 Present, not voting.

Yeas — Aliseda; Anderson, C.; Anderson, R.; Beck; Berman; Branch; Burkett; Button; Cain; Carter; Christian; Cook; Creighton; Crownover; Davis, J.; Davis, S.; Driver; Eissler; Fletcher; Flynn; Frullo; Gonzales, L.; Gooden; Hancock; Hardcastle; Harless; Hilderbran; Hopson; Hunter; Isaac; Jackson; King, P.; King, S.; Kleinschmidt; Landtroop; Larson; Laubenberg; Lewis; Lyne; Madden; Margo; Morrison; Nash; Orr; Paxton; Perry; Pitts; Price; Riddle; Schwertner; Scott; Sheets; Sheffield; Shelton; Simpson; Smith, T.; Smithee; Taylor, L.; Taylor, V.; Torres; Woolley; Zerwas.

Nays — Alonzo; Alvarado; Anchia; Aycok; Bohac; Bonnen; Brown; Burnam; Callegari; Castro; Craddick; Darby; Davis, Y.; Deshotel; Dukes; Dutton; Eiland; Elkins; Farias; Farrar; Gallego; Garza; Geren; Giddings; Gonzales, V.; Gonzalez; Guillen; Gutierrez; Hamilton; Harper-Brown; Hartnett; Hernandez Luna; Hochberg; Howard, C.; Howard, D.; Huberty; Hughes; Johnson; King, T.;

Kolkhorst; Kuempel; Lavender; Legler; Lozano; Lucio; Mallory Caraway; Marquez; Martinez; Martinez Fischer; McClendon; Menendez; Miles; Miller, D.; Muñoz; Murphy; Naishtat; Oliveira; Otto; Parker; Patrick; Phillips; Pickett; Quintanilla; Raymond; Reynolds; Ritter; Rodriguez; Smith, W.; Solomons; Strama; Thompson; Truitt; Turner; Veasey; Villarreal; Vo; Walle; Weber; White; Zedler.

Present, not voting — Mr. Speaker(C).

Absent, Excused — Coleman.

Absent — Allen; Chisum; Keffer; Miller, S.; Peña; Workman.

Amendment No. 7, as amended, was adopted by (Record 853): 100 Yeas, 45 Nays, 1 Present, not voting.

Yeas — Allen; Alonzo; Alvarado; Anchia; Aycock; Beck; Bohac; Bonnen; Branch; Brown; Burnam; Callegari; Castro; Chisum; Christian; Craddick; Darby; Davis, S.; Davis, Y.; Deshotel; Dukes; Dutton; Eiland; Elkins; Farias; Farrar; Gallego; Garza; Geren; Giddings; Gonzales, V.; Gonzalez; Guillen; Gutierrez; Hamilton; Harless; Hartnett; Hernandez Luna; Hochberg; Howard, C.; Howard, D.; Huberty; Hughes; Johnson; Keffer; King, S.; Kolkhorst; Kuempel; Larson; Lavender; Legler; Lozano; Lucio; Madden; Mallory Caraway; Margo; Marquez; Martinez; Martinez Fischer; McClendon; Menendez; Miles; Miller, D.; Miller, S.; Muñoz; Murphy; Naishtat; Oliveira; Orr; Otto; Parker; Patrick; Perry; Phillips; Pickett; Pitts; Quintanilla; Raymond; Reynolds; Riddle; Ritter; Rodriguez; Sheffield; Simpson; Smith, T.; Smith, W.; Solomons; Strama; Thompson; Truitt; Turner; Veasey; Villarreal; Vo; Walle; Weber; White; Workman; Zedler; Zerwas.

Nays — Aliseda; Anderson, C.; Anderson, R.; Berman; Burkett; Button; Cain; Carter; Cook; Creighton; Crownover; Davis, J.; Driver; Eissler; Fletcher; Flynn; Frullo; Gonzales, L.; Gooden; Hancock; Hardcastle; Hilderbran; Hopson; Hunter; Isaac; Jackson; King, P.; Kleinschmidt; Landtroop; Laubenberg; Lewis; Lyne; Morrison; Nash; Paxton; Price; Schwertner; Scott; Sheets; Shelton; Smithee; Taylor, L.; Taylor, V.; Torres; Woolley.

Present, not voting — Mr. Speaker(C).

Absent, Excused — Coleman.

Absent — Harper-Brown; King, T.; Peña.

STATEMENTS OF VOTE

I was shown voting no on Record No. 853. I intended to vote yes.

Aliseda

I was shown voting no on Record No. 853. I intended to vote yes.

R. Anderson

I was shown voting no on Record No. 853. I intended to vote yes.

Creighton

I was shown voting no on Record No. 853. I intended to vote yes.

Eissler

When Record No. 853 was taken, I was in the house but away from my desk. I would have voted yes.

Harper-Brown

I was shown voting no on Record No. 853. I intended to vote yes.

Hilderbran

When Record No. 853 was taken, I was in the house but away from my desk. I would have voted yes.

T. King

I was shown voting no on Record No. 853. I intended to vote yes.

Sheets

I was shown voting yes on Record No. 853. I intended to vote no.

Villarreal

Amendment No. 4 - Vote Reconsidered

Representative Sheets moved to reconsider the vote by which Amendment No. 4 was tabled.

The motion to reconsider prevailed.

Amendment No. 4 was adopted.

Amendment No. 9

Representative Dutton offered the following amendment to **HB 274**:

Amend **HB 274** (house committee printing) as follows:

(1) On page 1, line 8, strike "shall" and substitute "may".

(2) On page 1, line 11, after the period, insert the following:

Notwithstanding Section 22.003 and this section, any rules adopted by the supreme court under this subsection do not take effect until approved by the legislature.

Representative Creighton moved to table Amendment No. 9.

The motion to table prevailed by (Record 854): 95 Yeas, 51 Nays, 1 Present, not voting.

Yeas — Aliseda; Anderson, C.; Anderson, R.; Aycock; Beck; Berman; Bohac; Bonnen; Branch; Brown; Burkett; Button; Cain; Callegari; Carter; Chisum; Christian; Cook; Craddick; Creighton; Crownover; Darby; Davis, J.; Davis, S.; Driver; Eissler; Elkins; Fletcher; Flynn; Frullo; Garza; Geren; Gonzales, L.; Gooden; Hamilton; Hancock; Harless; Harper-Brown; Hartnett; Hilderbran; Hopson; Howard, C.; Hunter; Isaac; Jackson; Keffer; King, P.; King, S.; Kleinschmidt; Kolkhorst; Kuempel; Landtroop; Larson; Laubenberg; Lavender; Legler; Lewis; Lyne; Madden; Margo; Miller, D.; Miller, S.; Morrison; Murphy; Nash; Orr; Otto; Parker; Patrick; Paxton; Perry; Phillips; Pitts; Price;

Riddle; Ritter; Schwertner; Scott; Sheets; Sheffield; Shelton; Smith, T.; Smith, W.; Smithee; Solomons; Taylor, L.; Taylor, V.; Torres; Truitt; Weber; White; Woolley; Workman; Zedler; Zerwas.

Nays — Allen; Alonzo; Alvarado; Anchia; Burnam; Castro; Davis, Y.; Deshotel; Dukes; Dutton; Eiland; Farias; Farrar; Gallego; Giddings; Gonzales, V.; Gonzalez; Guillen; Gutierrez; Hernandez Luna; Hochberg; Howard, D.; Huberty; Hughes; Johnson; King, T.; Lozano; Lucio; Mallory Caraway; Marquez; Martinez; Martinez Fischer; McClendon; Menendez; Miles; Muñoz; Naishtat; Oliveira; Pickett; Quintanilla; Raymond; Reynolds; Rodriguez; Simpson; Strama; Thompson; Turner; Veasey; Villarreal; Vo; Walle.

Present, not voting — Mr. Speaker(C).

Absent, Excused — Coleman.

Absent — Hardcastle; Peña.

Amendment No. 10

Representative Dutton offered the following amendment to **HB 274**:

Amend **HB 274** (house committee printing) as follows:

(1) On page 1, line 23, strike "Subsection (h)" and substitute "Subsections (h) and (i)".

(2) On page 1, line 24, strike "shall" and substitute "may".

(3) On page 2, between lines 14 and 15, insert the following:

(i) Notwithstanding Section 22.003 and this section, any rules adopted by the supreme court under Subsection (h) do not take effect until approved by the legislature.

Representative Creighton moved to table Amendment No. 10.

The motion to table prevailed by (Record 855): 97 Yeas, 50 Nays, 1 Present, not voting.

Yeas — Aliseda; Anderson, C.; Anderson, R.; Aycock; Beck; Berman; Bohac; Bonnen; Branch; Brown; Burkett; Button; Cain; Callegari; Carter; Chisum; Christian; Cook; Craddick; Creighton; Crownover; Darby; Davis, J.; Davis, S.; Driver; Eissler; Elkins; Fletcher; Flynn; Frullo; Garza; Geren; Gonzales, L.; Gooden; Hamilton; Hancock; Hardcastle; Harless; Harper-Brown; Hartnett; Hilderbran; Hopson; Howard, C.; Huberty; Hunter; Isaac; Jackson; Keffer; King, P.; King, S.; Kleinschmidt; Kolkhorst; Kuempel; Landtroop; Larson; Laubenberg; Lavender; Legler; Lewis; Lyne; Madden; Margo; Miller, D.; Miller, S.; Morrison; Murphy; Nash; Orr; Otto; Parker; Patrick; Paxton; Perry; Phillips; Pitts; Price; Riddle; Ritter; Schwertner; Scott; Sheets; Sheffield; Shelton; Smith, T.; Smith, W.; Smithee; Solomons; Taylor, L.; Taylor, V.; Torres; Truitt; Weber; White; Woolley; Workman; Zedler; Zerwas.

Nays — Allen; Alonzo; Alvarado; Anchia; Burnam; Castro; Davis, Y.; Deshotel; Dukes; Dutton; Eiland; Farias; Farrar; Gallego; Giddings; Gonzales, V.; Gonzalez; Guillen; Gutierrez; Hernandez Luna; Hochberg; Howard, D.; Hughes; Johnson; King, T.; Lozano; Lucio; Mallory Caraway; Marquez; Martinez;

Martinez Fischer; McClendon; Menendez; Miles; Muñoz; Naishtat; Oliveira; Pickett; Quintanilla; Raymond; Reynolds; Rodriguez; Simpson; Strama; Thompson; Turner; Veasey; Villarreal; Vo; Walle.

Present, not voting — Mr. Speaker(C).

Absent, Excused — Coleman.

Absent — Peña.

Amendment No. 11

Representative Dutton offered the following amendment to **HB 274**:

Amend **HB 274** (house committee printing) as follows:

(1) On page 6, line 15, strike "or" and substitute "[~~or~~]".

(2) On page 6, line 17, between "court" and the period, insert the following:

; or

(7) an action under Chapter 21, Labor Code

Representative Creighton moved to table Amendment No. 11.

The motion to table prevailed by (Record 856): 96 Yeas, 50 Nays, 1 Present, not voting.

Yeas — Aliseda; Anderson, C.; Anderson, R.; Aycock; Beck; Berman; Bohac; Bonnen; Branch; Brown; Burkett; Button; Cain; Callegari; Carter; Chisum; Christian; Cook; Craddick; Creighton; Crownover; Darby; Davis, J.; Davis, S.; Driver; Eissler; Elkins; Fletcher; Flynn; Frullo; Garza; Geren; Gonzales, L.; Gooden; Hamilton; Hancock; Hardcastle; Harless; Harper-Brown; Hartnett; Hilderbran; Hopson; Howard, C.; Huberty; Hunter; Isaac; Jackson; Keffer; King, P.; King, S.; Kleinschmidt; Kolkhorst; Kuempel; Landtroop; Larson; Laubenberg; Lavender; Legler; Lewis; Lyne; Madden; Margo; Miller, D.; Miller, S.; Morrison; Murphy; Nash; Orr; Otto; Parker; Patrick; Paxton; Perry; Phillips; Pitts; Price; Ritter; Schwertner; Scott; Sheets; Sheffield; Shelton; Smith, T.; Smith, W.; Smithee; Solomons; Taylor, L.; Taylor, V.; Torres; Truitt; Weber; White; Woolley; Workman; Zedler; Zerwas.

Nays — Allen; Alonzo; Alvarado; Anchia; Burnam; Castro; Davis, Y.; Deshotel; Dukes; Dutton; Eiland; Farias; Farrar; Gallego; Giddings; Gonzales, V.; Gonzalez; Guillen; Gutierrez; Hernandez Luna; Hochberg; Howard, D.; Hughes; Johnson; King, T.; Lozano; Lucio; Mallory Caraway; Marquez; Martinez; Martinez Fischer; McClendon; Menendez; Miles; Muñoz; Naishtat; Oliveira; Pickett; Quintanilla; Raymond; Reynolds; Rodriguez; Simpson; Strama; Thompson; Turner; Veasey; Villarreal; Vo; Walle.

Present, not voting — Mr. Speaker(C).

Absent, Excused — Coleman.

Absent — Peña; Riddle.

HB 274, as amended, was passed by (Record 857): 96 Yeas, 49 Nays, 3 Present, not voting.

Yeas — Aliseda; Anderson, C.; Anderson, R.; Aycock; Beck; Berman; Bohac; Bonnen; Branch; Brown; Burkett; Button; Cain; Callegari; Carter; Chisum; Christian; Cook; Craddick; Creighton; Crownover; Darby; Davis, J.; Davis, S.; Driver; Eissler; Elkins; Fletcher; Flynn; Frullo; Garza; Geren; Gonzales, L.; Gooden; Hamilton; Hancock; Hardcastle; Harless; Harper-Brown; Hilderbran; Hopson; Howard, C.; Huberty; Hunter; Isaac; Jackson; Keffer; King, P.; King, S.; Kleinschmidt; Kolkhorst; Kuempel; Landtroop; Larson; Laubenberg; Lavender; Legler; Lewis; Lyne; Madden; Margo; Miller, D.; Miller, S.; Morrison; Murphy; Nash; Orr; Otto; Parker; Patrick; Paxton; Perry; Phillips; Pitts; Price; Riddle; Ritter; Schwertner; Scott; Sheets; Sheffield; Shelton; Simpson; Smith, T.; Smith, W.; Smithee; Taylor, L.; Taylor, V.; Torres; Truitt; Weber; White; Woolley; Workman; Zedler; Zerwas.

Nays — Allen; Alonzo; Alvarado; Anchia; Burnam; Castro; Davis, Y.; Deshotel; Dukes; Dutton; Eiland; Farias; Farrar; Gallego; Giddings; Gonzales, V.; Gonzalez; Guillen; Gutierrez; Hernandez Luna; Hochberg; Howard, D.; Hughes; Johnson; King, T.; Lozano; Lucio; Mallory Caraway; Marquez; Martinez; Martinez Fischer; McClendon; Menendez; Miles; Muñoz; Naishtat; Oliveira; Pickett; Quintanilla; Raymond; Reynolds; Rodriguez; Strama; Thompson; Turner; Veasey; Villarreal; Vo; Walle.

Present, not voting — Mr. Speaker(C); Hartnett; Solomons.

Absent, Excused — Coleman.

Absent — Peña.

STATEMENT OF VOTE

When Record No. 857 was taken, I was temporarily out of the house chamber. I would have voted yes.

Peña

REASON FOR VOTE

Although I agree with the intent of **HB 274** and its many good provisions, I voted present, not voting on the third reading adoption of the bill by the house because the bill, as currently drafted with the elimination of CPRC 42.004(d)(g), appears to allow a prevailing party to a legitimate lawsuit (i.e. you win) to still be responsible to pay the losing side's attorney fees along with paying your own attorney's fees. Furthermore, the jury to such a case would not be allowed to know if there has been a settlement offer that was reasonable and adjust a verdict accordingly to prevent such an occurrence. The practical and real consequences of this could have a devastating effect on individuals, small business owners, and others having legitimate disputes over the payment of damages. It is my hope that the house author and senate sponsor will address this issue that is presented in the proposed legislation.

Solomons

COMMITTEE MEETING ANNOUNCEMENTS

The following committee meetings were announced:

Judiciary and Civil Jurisprudence, during lunch recess today, Desk 35, for a formal meeting, to consider pending business.

Public Education, during lunch recess today, Desk 56, for a formal meeting, to consider pending business.

Public Health, during lunch recess today, Desk 90, for a formal meeting, to consider pending business.

Environmental Regulation, during lunch recess today, Desk 105, for a formal meeting, to consider **SB 615** and pending business.

RECESS

At 1:39 p.m., the speaker announced that the house would stand recessed until 2:40 p.m. today.

AFTERNOON SESSION

The house met at 2:40 p.m. and was called to order by the speaker.

BILLS AND RESOLUTIONS SIGNED BY THE SPEAKER

Notice was given at this time that the speaker had signed bills and resolutions in the presence of the house (see the addendum to the daily journal, Signed by the Speaker, Senate List No. 24).

HR 1661 - ADOPTED (by Workman)

Representative Workman moved to suspend all necessary rules to take up and consider at this time **HR 1661**.

The motion prevailed.

The following resolution was laid before the house:

HR 1661, Welcoming the members of the Rotary District 5870 and Rotary District 1650 Group Study Exchange program to the State Capitol.

HR 1661 was adopted.

GENERAL STATE CALENDAR SENATE BILLS THIRD READING

The following bills were laid before the house and read third time:

SB 887 ON THIRD READING (Riddle, Gallego, V. Taylor, and Carter - House Sponsors)

SB 887, A bill to be entitled An Act relating to the penalty for theft of an automated teller machine or the contents or components of an automated teller machine.

SB 887 was passed by (Record 858): 142 Yeas, 0 Nays, 1 Present, not voting.

Yeas — Aliseda; Allen; Alonzo; Alvarado; Anchia; Anderson, C.; Anderson, R.; Aycock; Beck; Berman; Bohac; Bonnen; Branch; Brown; Burkett; Burnam; Button; Cain; Callegari; Carter; Castro; Chisum; Christian; Cook; Craddick; Creighton; Crownover; Darby; Davis, J.; Davis, S.; Davis, Y.; Driver; Dukes; Eiland; Eissler; Elkins; Farias; Farrar; Fletcher; Flynn; Frullo; Gallego; Garza; Geren; Gonzales, L.; Gonzales, V.; Gonzalez; Gooden; Guillen; Gutierrez; Hamilton; Hancock; Hardcastle; Harless; Harper-Brown; Hartnett; Hernandez Luna; Hilderbran; Hochberg; Hopson; Howard, C.; Howard, D.; Huberty; Hughes; Hunter; Isaac; Jackson; Johnson; Keffer; King, P.; King, S.; King, T.; Kleinschmidt; Kolkhorst; Kuempel; Landtroop; Larson; Laubenberg; Lavender; Legler; Lewis; Lozano; Lucio; Lyne; Madden; Mallory Caraway; Margo; Marquez; Martinez; Martinez Fischer; McClendon; Menendez; Miller, D.; Miller, S.; Morrison; Muñoz; Murphy; Naishtat; Nash; Oliveira; Orr; Otto; Parker; Patrick; Paxton; Perry; Phillips; Pickett; Pitts; Price; Quintanilla; Raymond; Reynolds; Riddle; Ritter; Rodriguez; Schwertner; Scott; Sheets; Sheffield; Shelton; Simpson; Smith, T.; Smith, W.; Smithee; Solomons; Strama; Taylor, L.; Taylor, V.; Thompson; Torres; Truitt; Veasey; Villarreal; Vo; Walle; Weber; White; Woolley; Workman; Zedler; Zerwas.

Present, not voting — Mr. Speaker(C).

Absent, Excused — Coleman.

Absent — Deshotel; Dutton; Giddings; Miles; Peña; Turner.

STATEMENT OF VOTE

When Record No. 858 was taken, I was temporarily out of the house chamber. I would have voted yes.

Miles

SB 977 ON THIRD READING (Torres - House Sponsor)

SB 977, A bill to be entitled An Act relating to the imposition and use of the municipal hotel occupancy tax by certain eligible central municipalities.

SB 977 was passed by (Record 859): 130 Yeas, 12 Nays, 2 Present, not voting.

Yeas — Aliseda; Allen; Alonzo; Alvarado; Anchia; Anderson, C.; Anderson, R.; Aycock; Beck; Branch; Brown; Burkett; Burnam; Button; Callegari; Castro; Chisum; Christian; Cook; Craddick; Crownover; Darby; Davis, J.; Davis, S.; Davis, Y.; Driver; Dukes; Dutton; Eiland; Eissler; Elkins; Farias; Farrar; Fletcher; Flynn; Frullo; Gallego; Garza; Geren; Gonzales, L.; Gonzales, V.; Gonzalez; Gooden; Guillen; Gutierrez; Hamilton; Hancock; Hardcastle; Harless; Harper-Brown; Hartnett; Hernandez Luna; Hilderbran; Hochberg; Hopson; Howard, C.; Howard, D.; Huberty; Hughes; Hunter; Isaac; Jackson; Johnson; Keffer; King, P.; King, S.; King, T.; Kleinschmidt; Kolkhorst; Kuempel; Landtroop; Larson; Laubenberg; Lavender; Lewis; Lozano; Lucio; Lyne; Mallory Caraway; Margo; Marquez; Martinez; Martinez Fischer; McClendon; Menendez; Miles; Miller, D.; Morrison; Muñoz; Murphy; Naishtat; Nash; Orr; Otto; Parker;

Patrick; Paxton; Perry; Phillips; Pickett; Pitts; Price; Quintanilla; Raymond; Reynolds; Riddle; Ritter; Rodriguez; Schwertner; Scott; Sheets; Shelton; Smith, T.; Smith, W.; Smithee; Solomons; Strama; Taylor, L.; Taylor, V.; Thompson; Torres; Truitt; Veasey; Villarreal; Vo; Walle; Woolley; Workman; Zedler; Zerwas.

Nays — Berman; Bohac; Bonnen; Cain; Creighton; Legler; Madden; Miller, S.; Sheffield; Simpson; Weber; White.

Present, not voting — Mr. Speaker(C); Oliveira.

Absent, Excused — Coleman.

Absent — Carter; Deshotel; Giddings; Peña; Turner.

STATEMENTS OF VOTE

I was shown voting yes on Record No. 859. I intended to vote no.

Paxton

When Record No. 859 was taken, I was temporarily out of the house chamber. I would have voted yes.

Peña

POSTPONED BUSINESS

The following bills were laid before the house as postponed business:

SB 250 ON SECOND READING

(Anchia, Gallego, and Hartnett - House Sponsors)

SB 250, A bill to be entitled An Act relating to protective orders for stalking victims.

SB 250 was considered in lieu of **CSHB 825**.

SB 250 was read second time and was passed to third reading.

CSHB 825 - LAID ON THE TABLE SUBJECT TO CALL

Representative Anchia moved to lay **CSHB 825** on the table subject to call.

The motion prevailed.

CSHB 3308 ON SECOND READING

(by Rodriguez)

CSHB 3308, A bill to be entitled An Act relating to the operation of plug-in electric motor vehicles.

CSHB 3308 was read second time on May 5, postponed until May 6, postponed until May 7, and was again postponed until 7 a.m. today.

Amendment No. 1

Representative Chisum offered the following amendment to **CSHB 3308**:

Amend **CSHB 3308** (house committee printing) as follows:

(1) On page 1, lines 6 and 16, strike "plug-in electric" and substitute "alternative fuels".

(2) On page 1, line 13, strike "PLUG-IN ELECTRIC" and substitute "ALTERNATIVE FUELS".

(3) On page 2, strike lines 4-9 and substitute the following:

(6) is propelled:

(A) to a significant extent by an electric motor that draws electricity from a battery that:

(i) has a capacity of not less than 4 kilowatt hours; and

(ii) is capable of being recharged from an external source of electricity; or

(B) using compressed natural gas; and

(4) On page 2, lines 13 and 20, strike "plug-in electric" and substitute "alternative fuels".

Amendment No. 1 was adopted.

Amendment No. 2

Representative Fletcher offered the following amendment to **CSHB 3308**:

Amend **CSHB 3308**, in SECTION 1 of the bill, in proposed Section 224.153(e), Transportation Code (Committee Printing, page 1, line 10), by striking "impair the receipt of federal funds" and substituting "violate federal transit or highway funding restrictions".

Amendment No. 2 was adopted.

CSHB 3308, as amended, was passed to engrossment by (Record 860): 78 Yeas, 67 Nays, 1 Present, not voting.

Yeas — Allen; Alonzo; Alvarado; Anchia; Bohac; Branch; Burnam; Cain; Castro; Chisum; Christian; Cook; Craddick; Darby; Davis, J.; Davis, Y.; Dukes; Dutton; Eiland; Eissler; Farias; Farrar; Flynn; Gallego; Giddings; Gonzales, L.; Gonzales, V.; Gonzalez; Gooden; Guillen; Gutierrez; Hancock; Harless; Hernandez Luna; Howard, D.; Huberty; Hughes; Hunter; Johnson; Keffer; King, P.; King, T.; Laubenberger; Lozano; Lucio; Madden; Mallory Caraway; Marquez; Martinez; Martinez Fischer; McClendon; Menendez; Miles; Miller, D.; Morrison; Muñoz; Naishtat; Oliveira; Otto; Peña; Phillips; Pickett; Pitts; Quintanilla; Raymond; Reynolds; Rodriguez; Scott; Sheets; Smithee; Strama; Taylor, L.; Thompson; Torres; Turner; Veasey; Vo; Walle.

Nays — Aliseda; Anderson, C.; Anderson, R.; Aycock; Beck; Berman; Bonnen; Brown; Burkett; Button; Callegari; Carter; Creighton; Crownover; Davis, S.; Deshotel; Driver; Elkins; Fletcher; Frullo; Garza; Geren; Hamilton; Harper-Brown; Hartnett; Hochberg; Hopson; Howard, C.; Isaac; Jackson; King, S.; Kleinschmidt; Kolkhorst; Kuempel; Landtroop; Larson; Lavender; Legler; Lewis; Lyne; Margo; Miller, S.; Murphy; Nash; Orr; Parker; Patrick; Paxton; Perry; Price; Riddle; Ritter; Schwertner; Sheffield; Shelton; Simpson; Smith, T.; Smith, W.; Solomons; Taylor, V.; Truitt; Weber; White; Woolley; Workman; Zedler; Zerwas.

Present, not voting — Mr. Speaker(C).

Absent, Excused — Coleman.

Absent — Hardcastle; Hilderbran; Villarreal.

STATEMENTS OF VOTE

I was shown voting no on Record No. 860. I intended to vote yes.

Aliseda

When Record No. 860 was taken, I was in the house but away from my desk. I would have voted no.

Hilderbran

I was shown voting yes on Record No. 860. I intended to vote no.

Laubenberg

I was shown voting yes on Record No. 860. I intended to vote no.

Morrison

I was shown voting no on Record No. 860. I intended to vote yes.

Nash

I was shown voting no on Record No. 860. I intended to vote yes.

Paxton

CSHB 3790 ON SECOND READING

(by Pitts)

CSHB 3790, A bill to be entitled An Act relating to certain state fiscal matters; providing penalties.

CSHB 3790 was read second time on May 3, postponed until May 4, postponed until May 5, and was again postponed until 8 a.m. today.

Representative Pitts moved to postpone consideration of **CSHB 3790** until 8 a.m. tomorrow.

The motion prevailed by (Record 861): 124 Yeas, 22 Nays, 1 Present, not voting.

Yeas — Aliseda; Allen; Alonzo; Alvarado; Anchia; Anderson, C.; Anderson, R.; Aycock; Beck; Berman; Bohac; Bonnen; Branch; Brown; Burkett; Button; Cain; Callegari; Carter; Chisum; Cook; Craddick; Creighton; Crownover; Darby; Davis, J.; Davis, S.; Deshotel; Driver; Dukes; Eiland; Eissler; Elkins; Fletcher; Flynn; Frullo; Garza; Geren; Giddings; Gonzales, L.; Gonzales, V.; Gooden; Guillen; Hamilton; Hancock; Hardcastle; Harless; Harper-Brown; Hartnett; Hilderbran; Hochberg; Hopson; Howard, C.; Howard, D.; Hughes; Hunter; Isaac; Jackson; Johnson; Keffer; King, P.; King, S.; King, T.; Kleinschmidt; Kolkhorst; Kuempel; Landtroop; Larson; Laubenberg; Lavender; Legler; Lewis; Lucio; Lyne; Madden; Mallory Caraway; Margo; McClendon; Menendez; Miller, D.; Miller, S.; Morrison; Murphy; Naishtat; Nash; Orr; Otto; Parker; Patrick; Paxton; Peña; Perry; Phillips; Pickett; Pitts; Price; Quintanilla; Raymond; Riddle; Ritter; Schwertner; Scott; Sheets; Sheffield; Shelton; Simpson;

Smith, T.; Smith, W.; Smithee; Solomons; Strama; Taylor, L.; Taylor, V.; Thompson; Torres; Truitt; Turner; Villarreal; Weber; White; Woolley; Workman; Zedler; Zerwas.

Nays — Burnam; Castro; Davis, Y.; Dutton; Farias; Farrar; Gallego; Gonzalez; Gutierrez; Hernandez Luna; Lozano; Marquez; Martinez; Martinez Fischer; Miles; Muñoz; Oliveira; Reynolds; Rodriguez; Veasey; Vo; Walle.

Present, not voting — Mr. Speaker(C).

Absent, Excused — Coleman.

Absent — Christian; Huberty.

STATEMENTS OF VOTE

I was shown voting yes on Record No. 861. I intended to vote no.

Anchia

I was shown voting yes on Record No. 861. I intended to vote no.

D. Howard

When Record No. 861 was taken, I was in the house but away from my desk. I would have voted yes.

Huberty

I was shown voting yes on Record No. 861. I intended to vote no.

Strama

MESSAGE FROM THE SENATE

A message from the senate was received at this time (see the addendum to the daily journal, Messages from the Senate, Message No. 1).

CSHB 3640 ON SECOND READING

(by Pitts)

CSHB 3640, A bill to be entitled An Act relating to the remittance and allocation of certain taxes and fees.

CSHB 3640 was read second time on May 3, postponed until May 4, postponed until May 5, and was again postponed until 8 a.m. today.

Representative Pitts moved to postpone consideration of **CSHB 3640** until 8 a.m. tomorrow.

The motion prevailed.

CSHB 3665 ON SECOND READING

(by Otto)

CSHB 3665, A bill to be entitled An Act relating to state fiscal matters related to general government.

CSHB 3665 was read second time on May 3, postponed until May 4, postponed until May 5, and was again postponed until 8 a.m. today.

Representative Otto moved to postpone consideration of **CSHB 3665** until 8 a.m. tomorrow.

The motion prevailed.

CSHB 3639 ON SECOND READING
(by Pitts and Aycock)

CSHB 3639, A bill to be entitled An Act relating to state fiscal matters related to public and higher education.

CSHB 3639 was read second time on May 3, postponed until May 4, postponed until May 5, and was again postponed until 8 a.m. today.

Representative Pitts moved to postpone consideration of **CSHB 3639** until 8 a.m. tomorrow.

The motion prevailed.

HB 3648 ON SECOND READING
(by Otto)

HB 3648, A bill to be entitled An Act relating to state fiscal matters related to the judiciary.

HB 3648 was read second time on May 3, postponed until May 4, postponed until May 5, and was again postponed until 8 a.m. today.

Representative Otto moved to postpone consideration of **HB 3648** until 8 a.m. tomorrow.

The motion prevailed.

CSHB 3418 ON SECOND READING
(by Darby)

CSHB 3418, A bill to be entitled An Act relating to certain state fiscal matters related to natural resources or the environment.

CSHB 3418 was read second time on May 3, postponed until May 4, postponed until May 5, and was again postponed until 8 a.m. today.

Representative Darby moved to postpone consideration of **CSHB 3418** until 8 a.m. tomorrow.

The motion prevailed.

CSHB 2963 ON SECOND READING
(by Crownover)

CSHB 2963, A bill to be entitled An Act relating to deadlines for the Railroad Commission of Texas to review certain applications for surface coal mining operation permits.

CSHB 2963 was read second time on May 3, postponed until May 6, and was again postponed until 8 a.m. today.

Representative Crownover moved to postpone consideration of **CSHB 2963** until 6 p.m. today.

The motion prevailed.

HB 1250 ON SECOND READING
(by Frullo)

HB 1250, A bill to be entitled An Act relating to the use of facsimile signatures for certain documents involving certain municipalities.

HB 1250 was read second time on April 26, postponed until May 3, postponed until May 6, and was again postponed until 9 a.m. today.

Representative Frullo moved to postpone consideration of **HB 1250** until 9 a.m. Wednesday, May 11.

The motion prevailed.

HB 1089 ON SECOND READING
(by Martinez Fischer, Garza, et al.)

HB 1089, A bill to be entitled An Act relating to the authority of a county or municipality to require the removal of graffiti by a property owner.

HB 1089 was read second time on April 21, postponed until April 26, postponed until May 2, and was again postponed until 9:05 a.m. today.

Representative Menendez moved to postpone consideration of **HB 1089** until 8 a.m. Wednesday, May 11.

The motion prevailed.

SB 1082 ON SECOND READING
(Laubenberg - House Sponsor)

SB 1082, A bill to be entitled An Act relating to strategic partnerships for the continuation of certain water districts annexed by a municipality.

SB 1082 was considered in lieu of **HB 1979**.

SB 1082 was read second time.

(Keffer in the chair)

Amendment No. 1

Representative Elkins offered the following amendment to **SB 1082**:

Amend **SB 1082** (house committee printing) by adding the following appropriately numbered SECTIONS to the bill and renumbering subsequent SECTIONS of the bill accordingly:

SECTION _____. (a) Section 43.0751, Local Government Code, is amended by adding Subsection (f-1) read as follows:

(f-1) A strategic partnership agreement may not provide for the regulation of fireworks within the boundaries of the district.

SECTION _____. Section 43.0751(f-1), Local Government Code, as added by this Act, apply only to a strategic partnership agreement entered into on or after the effective date of this Act.

Amendment No. 1 was adopted.

Amendment No. 2

Representative Elkins offered the following amendment to **SB 1082**:

Amend **SB 1082** (house committee printing) by adding the following appropriately numbered SECTIONS to the bill and renumbering subsequent SECTIONS of the bill accordingly:

SECTION _____. Section 43.0751, Local Government Code, is amended by adding Subsection (k-1) to read as follows:

(k-1) A strategic partnership agreement may not provide for the imposition of a sales tax without voter approval within the boundaries of the district.

SECTION _____. Section 43.0751(k-1), Local Government Code, as added by this Act, applies only to a strategic partnership agreement entered into on or after the effective date of this Act.

Amendment No. 2 was adopted.

SB 1082, as amended, was passed to third reading.

HB 3132 ON SECOND READING
(by Geren)

HB 3132, A bill to be entitled An Act relating to the membership, powers, and duties of the State Preservation Board.

HB 3132 was read second time on May 3, postponed until May 4, postponed until May 5, postponed until May 6, and was again postponed until 10 a.m. today.

Representative Geren moved to postpone consideration of **HB 3132** until 8 a.m. tomorrow.

The motion prevailed.

CSHB 2233 ON SECOND READING
(by Huberty, Rodriguez, et al.)

CSHB 2233, A bill to be entitled An Act relating to certain contracts entered into by school districts for another entity to provide food services at one or more district schools.

CSHB 2233 was read second time on May 4 and was postponed until 3 p.m. today.

Representative Huberty moved to postpone consideration of **CSHB 2233** until 3 p.m. tomorrow.

The motion prevailed.

**EMERGENCY CALENDAR
HOUSE BILLS
SECOND READING**

The following bills were laid before the house and read second time:

**CSHB 12 ON SECOND READING
(by Solomons, Bohac, Harless, et al.)**

CSHB 12, A bill to be entitled An Act relating to the enforcement of state and federal laws governing immigration by certain governmental entities.

REMARKS ORDERED PRINTED

On Friday, May 7, Representative Martinez Fischer moved to print remarks **CSHB 12**.

The motion prevailed. [Please refer to the supplement to today's journal for the text of today's debate on **CSHB 12**.]

Amendment No. 1

Representative Solomons offered the following amendment to **CSHB 12**:

Amend **CSHB 12** (house committee printing) by striking all below the enacting clause and substituting the following:

SECTION 1. Chapter 370, Local Government Code, is amended by adding Section 370.0031 to read as follows:

Sec. 370.0031. LOCAL GOVERNMENT POLICY REGARDING ENFORCEMENT OF STATE AND FEDERAL IMMIGRATION LAWS. (a) This section applies to:

(1) the governing body of a municipality, county, or special district or authority, subject to Subsections (b) and (b-1);

(2) an officer, employee, or other body that is part of a municipality, county, or special district or authority, including a sheriff, municipal police department, municipal attorney, or county attorney; and

(3) a district attorney or criminal district attorney.

(b) This section does not apply to a school district or open-enrollment charter school or a junior college district, except that this subsection does not exclude the application of this section to a commissioned peace officer employed or commissioned by a school district or open-enrollment charter school or a junior college district.

(b-1) This section does not apply to a hospital or hospital district created under Subtitle C or D, Title 4, Health and Safety Code, or a hospital district created under a general or special law authorized by Article IX, Texas Constitution, to the extent that the hospital or hospital district is providing access to or delivering medical or health care services as required under the following applicable federal or state laws:

(1) 42 U.S.C. Section 1395dd;

(2) 42 U.S.C. Section 1396b(v);

(3) Subchapter C, Chapter 61, Health and Safety Code;

(4) Chapter 81, Health and Safety Code; and

(5) Section 311.022, Health and Safety Code.

(b-2) Subsection (b-1) does not exclude the application of this section to a commissioned peace officer employed by or commissioned by a hospital or hospital district subject to Subsection (b-1).

(c) An entity described by Subsection (a) may not adopt a rule, order, ordinance, or policy under which the entity prohibits the enforcement of the laws of this state or federal law relating to immigrants or immigration, including the federal Immigration and Nationality Act (8 U.S.C. Section 1101 et seq.).

(d) In compliance with Subsection (c), an entity described by Subsection (a) may not prohibit a person employed by or otherwise under the direction or control of the entity from doing any of the following:

(1) inquiring into the immigration status of a person lawfully detained for the investigation of a criminal offense or arrested;

(2) with respect to information relating to the immigration status, lawful or unlawful, of any person lawfully detained for the investigation of a criminal offense or arrested:

(A) sending the information to or requesting or receiving the information from United States Citizenship and Immigration Services or United States Immigration and Customs Enforcement, including information regarding an individual's place of birth;

(B) maintaining the information; or

(C) exchanging the information with another federal, state, or local governmental entity;

(3) assisting or cooperating with a federal immigration officer as reasonable and necessary, including providing enforcement assistance; or

(4) permitting a federal immigration officer to enter and conduct enforcement activities at a municipal or county jail to enforce federal immigration laws.

(d-1) An entity described by Subsection (a) or a person employed by or otherwise under the direction or control of the entity may not consider race, color, language, or national origin while enforcing the laws described by Subsection (c) except to the extent permitted by the United States Constitution or the Texas Constitution.

(e) An entity described by Subsection (a) may not receive state grant funds if the entity adopts a rule, order, ordinance, or policy under which the entity prohibits the enforcement of the laws of this state or federal laws relating to Subsection (c) or, by consistent actions, prohibits the enforcement of the laws of this state or federal laws relating to Subsection (c). State grant funds for the entity shall be denied for the fiscal year following the year in which a final judicial determination in an action brought under this section is made that the entity has intentionally prohibited the enforcement of the laws of this state or federal laws relating to Subsection (c).

(f) Any citizen residing in the jurisdiction of an entity described by Subsection (a) may file a complaint with the attorney general if the citizen offers evidence to support an allegation that the entity has adopted a rule, order, ordinance, or policy under which the entity prohibits the enforcement of the laws

of this state or federal laws relating to Subsection (c) or that, by consistent actions, prohibits the enforcement of the laws of this state or federal laws relating to Subsection (c). The citizen must include with the complaint the evidence the citizen has that supports the complaint.

(g) If the attorney general determines that a complaint filed under Subsection (f) against an entity described by Subsection (a) is valid, the attorney general may file a petition for a writ of mandamus or apply for other appropriate equitable relief in a district court in Travis County or in a county in which the principal office of an entity described by Subsection (a) is located to compel the entity that adopts a rule, order, ordinance, or policy under which the local entity prohibits the enforcement of the laws of this state or federal laws relating to Subsection (c) or that, by consistent actions, prohibits the enforcement of the laws of this state or federal laws relating to Subsection (c) to comply with Subsection (c). The attorney general may recover reasonable expenses incurred in obtaining relief under this subsection, including court costs, reasonable attorney's fees, investigative costs, witness fees, and deposition costs.

(h) An appeal of a suit brought under Subsection (g) is governed by the procedures for accelerated appeals in civil cases under the Texas Rules of Appellate Procedure. The appellate court shall render its final order or judgment with the least possible delay.

SECTION 2. The heading to Chapter 370, Local Government Code, is amended to read as follows:

CHAPTER 370. MISCELLANEOUS PROVISIONS RELATING TO
~~[MUNICIPAL AND COUNTY]~~ HEALTH AND PUBLIC SAFETY APPLYING
TO MORE THAN ONE TYPE OF LOCAL GOVERNMENT

SECTION 3. This Act takes effect immediately if it receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, this Act takes effect September 1, 2011.

(Speaker in the chair)

Representative Solomons moved to postpone consideration of **CSHB 12** until 4:30 p.m. today.

The motion prevailed.

**MAJOR STATE CALENDAR
HOUSE BILLS
SECOND READING**

The following bills were laid before the house and read second time:

**SB 1693 ON SECOND READING
(Thompson - House Sponsor)**

SB 1693, A bill to be entitled An Act relating to periodic rate adjustments by electric utilities.

SB 1693 was considered in lieu of **HB 3610**.

Amendment No. 1

Representative Turner offered the following amendment to **SB 1693**:

Amend **SB 1693**, SECTION 1, page 3, line 17, by adding new Subsection (e) and re-label the subsequent subsections properly: new Subsection (e) to read as follows:

(e) a periodic rate adjustment approved under this section may not include indirect corporate costs, or capitalized operations and maintenance expenses.

Amendment No. 1 was adopted.

Amendment No. 2

Representative Turner offered the following amendment to **SB 1693**:

Amend **SB 1693**, SECTION 1, page 3, line 17, by adding new Subsection (e) and re-label the subsequent subsections properly: new Subsection (e) to read as follows:

(e) the sum of the four periodic rate adjustments allowed under this section may not result in more than a ten percent increase from the base rate distribution revenues set in the most recent comprehensive base rate proceeding.

Representative Huberty moved to table Amendment No. 2.

The motion to table prevailed by (Record 862): 88 Yeas, 55 Nays, 3 Present, not voting.

Yeas — Aliseda; Alvarado; Anderson, C.; Anderson, R.; Beck; Berman; Bohac; Branch; Cain; Callegari; Chisum; Christian; Cook; Craddick; Creighton; Crownover; Davis, S.; Deshotel; Driver; Eissler; Elkins; Fletcher; Flynn; Frullo; Geren; Gonzales, L.; Gooden; Hamilton; Hancock; Hardcastle; Harless; Howard, C.; Huberty; Hughes; Hunter; Isaac; Jackson; Keffer; King, P.; King, S.; King, T.; Kleinschmidt; Kuempel; Landtroop; Larson; Laubenberg; Lavender; Legler; Lewis; Lozano; Lyne; Madden; Margo; Menendez; Miller, D.; Miller, S.; Morrison; Murphy; Oliveira; Orr; Otto; Parker; Paxton; Peña; Perry; Phillips; Pickett; Pitts; Quintanilla; Ritter; Schwertner; Scott; Sheets; Sheffield; Shelton; Simpson; Smith, T.; Smith, W.; Taylor, L.; Taylor, V.; Thompson; Torres; Truitt; Weber; White; Woolley; Zedler; Zerwas.

Nays — Allen; Alonzo; Anchia; Aycock; Bonnen; Brown; Burkett; Burnam; Button; Castro; Darby; Davis, J.; Davis, Y.; Dukes; Dutton; Eiland; Farias; Farrar; Gallego; Garza; Giddings; Gonzales, V.; Gonzalez; Guillen; Gutierrez; Harper-Brown; Hartnett; Hochberg; Hopson; Howard, D.; Johnson; Kolkhorst; Mallory Caraway; Marquez; Martinez; Martinez Fischer; McClendon; Miles; Muñoz; Naishtat; Nash; Patrick; Price; Raymond; Reynolds; Riddle; Rodriguez; Smithee; Strama; Turner; Veasey; Villarreal; Vo; Walle; Workman.

Present, not voting — Mr. Speaker(C); Carter; Hilderbran.

Absent, Excused — Coleman.

Absent — Hernandez Luna; Lucio; Solomons.

STATEMENTS OF VOTE

I was shown voting no on Record No. 862. I intended to vote yes.

Aycock

When Record No. 862 was taken, I was in the house but away from my desk. I would have voted yes.

Lucio

I was shown voting yes on Record No. 862. I intended to vote no.

Zedler

Amendment No. 3

Representative Turner offered the following amendment to **SB 1693**:

Amend **SB 1693** as follows:

On page 5, line 4, strike Subsection (g) and insert the following:

(g) The PUC shall undertake a study and conduct a report analyzing any periodic rate adjustment established under this section of PURA. The study shall be available for the legislature's review by January 31st, 2017 so that the legislature may properly be informed as to the need to continue the commission's authority to allow periodic rate adjustments. The report shall contain but shall not be limited to:

(1) an analysis of all periodic rate adjustment approved by the commission;

(2) an analysis of the amounts in real dollars and percentages of the approved amounts by the commission and the effects on all classes of ratepayers;

(3) the costs savings, if any, realized by all parties by utilizing periodic rate adjustment as opposed to rate making proceedings;

(4) an analysis on distribution costs included in periodic rate adjustment, and there appropriateness for inclusion in periodic rate adjustments;

(5) an analysis submitted by The Office of Public Counsel on the effects of periodic rate adjustments.

(h) This section expires January 1, 2017.

Amendment No. 3 was adopted.

Amendment No. 4

Representative Y. Davis offered the following amendment to **SB 1693**:

Amend **SB 1693** (house committee report) by inserting the following appropriately numbered SECTION to the bill and renumbering subsequent SECTIONS of the bill accordingly:

SECTION _____. Subchapter E, Chapter 39, Utilities Code, is amended by adding Section 39.207 to read as follows:

Sec. 39.207. RELIABILITY OF RETAIL ELECTRIC PROVIDERS. Notwithstanding any other provision of this chapter, the commission by rule shall establish a mechanism to ensure that each retail electric provider is financially and organizationally reliable to provide services the retail electric provider offers. The commission may require a retail electric provider to disclose financial and business organization information as necessary for the commission to evaluate and ensure the provider's reliability.

Amendment No. 4 - Point of Order

Representative P. King raised a point of order against further consideration of Amendment No. 4 under Rule 11, Section 2 of the House Rules on the grounds that the amendment is not germane to the bill.

The point of order was withdrawn.

Amendment No. 4 was withdrawn.

SB 1693 - STATEMENT OF LEGISLATIVE INTENT

REPRESENTATIVE BRANCH: Ms. Thompson, isn't it true that your bill has solid protections in it to preserve the current jurisdictional status of cities' utilities rates and services?

REPRESENTATIVE THOMPSON: Yes.

BRANCH: And isn't it also correct, Ms. Thompson, that nothing in this bill negatively impacts the cities' jurisdiction over utilities?

THOMPSON: Yes, that's correct.

BRANCH: Thank you very much. I just wanted to get that intent into the record.

REMARKS ORDERED PRINTED

Representative Branch moved to print remarks between Representative Thompson and Representative Branch.

The motion prevailed.

SB 1693, as amended, was passed to third reading by (Record 863): 143 Yeas, 5 Nays, 1 Present, not voting.

Yeas — Aliseda; Allen; Alonzo; Alvarado; Anchia; Anderson, C.; Anderson, R.; Aycock; Beck; Berman; Bohac; Branch; Brown; Burkett; Burnam; Cain; Callegari; Castro; Chisum; Christian; Cook; Craddick; Creighton; Crownover; Darby; Davis, J.; Davis, S.; Davis, Y.; Deshotel; Driver; Dukes; Dutton; Eiland; Eissler; Elkins; Farias; Farrar; Fletcher; Flynn; Frullo; Gallego; Garza; Geren; Giddings; Gonzales, L.; Gonzales, V.; Gonzalez; Gooden; Guillen; Gutierrez; Hamilton; Hancock; Hardcastle; Harless; Harper-Brown; Hernandez Luna; Hilderbran; Hochberg; Hopson; Howard, C.; Howard, D.; Huberty; Hughes; Hunter; Isaac; Jackson; Johnson; Keffer; King, P.; King, S.; King, T.; Kleinschmidt; Kolkhorst; Kuempel; Landtroop; Larson; Laubenberg; Lavender; Legler; Lewis; Lozano; Lucio; Lyne; Madden; Mallory Caraway; Margo; Marquez; Martinez; Martinez Fischer; McClendon; Menendez; Miles; Miller, D.; Miller, S.; Morrison; Muñoz; Murphy; Naishtat; Nash; Oliveira; Orr; Otto; Parker; Patrick; Paxton; Peña; Perry; Phillips; Pickett; Pitts; Price; Quintanilla; Raymond; Reynolds; Riddle; Ritter; Rodriguez; Schwertner; Scott; Sheets; Sheffield; Shelton; Simpson; Smith, T.; Smith, W.; Smithee; Solomons; Strama; Taylor, L.; Taylor, V.; Thompson; Torres; Truitt; Turner; Veasey; Villarreal; Vo; Walle; Weber; White; Woolley; Zedler; Zerwas.

Nays — Bonnen; Button; Carter; Hartnett; Workman.

Present, not voting — Mr. Speaker(C).

Absent, Excused — Coleman.

HB 3610 - LAID ON THE TABLE SUBJECT TO CALL

Representative Thompson moved to lay **HB 3610** on the table subject to call.

The motion prevailed.

COMMITTEE GRANTED PERMISSION TO MEET

Representative Hilderbran requested permission for the Committee on Ways and Means to meet while the house is in session, at 5:15 p.m. today, in 3W.15, to consider pending business.

Permission to meet was granted.

FIVE-DAY POSTING RULE SUSPENDED

Representative Gallego moved to suspend the five-day posting rule and all necessary rules to allow the Committee on Criminal Jurisprudence to consider **SB 153, SB 348, SB 779, SB 838, SB 843, SB 882, SB 1116, SB 1273, SB 1522, SB 1681, SB 1682, SB 1701, and SB 1702** at 8 a.m. tomorrow in JHR 120.

The motion prevailed.

Representative Ritter moved to suspend the five-day posting rule to allow the Committee on Natural Resources to consider **HB 3864, HB 3865, HB 3866, SB 573, SB 728, SB 907, SB 987, SB 1132, SB 1225, SB 1295, SB 1361,** and pending business at 8 a.m. tomorrow in E2.010.

The motion prevailed.

COMMITTEE MEETING ANNOUNCEMENTS

The following committee meetings were announced:

Ways and Means, 5:15 p.m. today, 3W.15, for a formal meeting, to consider pending business.

Criminal Jurisprudence, 8 a.m. or upon final adjournment tomorrow, JHR 120, for a public hearing, to consider **SB 153, SB 348, SB 779, SB 838, SB 843, SB 882, SB 1116, SB 1273, SB 1522, SB 1681, SB 1682, SB 1701, and SB 1702.**

Natural Resources, 8 a.m. tomorrow, E2.010, for a public hearing, to consider **HB 3864, HB 3865, HB 3866, SB 573, SB 728, SB 907, SB 987, SB 1132, SB 1225, SB 1295, SB 1361,** and pending business.

CSHB 3025 ON SECOND READING

(by Branch, Guillen, and Lozano)

CSHB 3025, A bill to be entitled An Act relating to measures to facilitate the transfer of students within the public higher education system and the timely graduation of students from public institutions of higher education.

(Keffer in the chair)

Amendment No. 1

Representative Branch offered the following amendment to **CSHB 3025**:

Amend **CSHB 3025** (house committee report) as follows:

- (1) On page 1, strike lines 12 through 19 and substitute the following:
 - (2) "Qualified degree-granting career school or college" means a career school or college determined by the board under Subsection (c) to be qualified to participate in a statewide transfer compact developed under this section.
- (2) On page 2, between lines 5 and 6, insert the following:
 - (c) A career school or college may apply to the board to participate in a statewide transfer compact developed under this section. On application by a career school or college, the board shall review the school's or college's curriculum for the purpose of determining whether the school or college is qualified to participate in the compact. The board may determine that the career school or college is qualified to participate in the compact only if the board finds that the school or college:
 - (1) is authorized to grant degrees in this state;
 - (2) has adopted and implemented a core curriculum described by Section 61.822, applying the same assumptions and defining characteristics applicable to institutions of higher education; and
 - (3) has appropriately identified for each of its core curriculum courses the equivalent course number under the common course numbering system approved by the board under Section 61.832.
- (3) Reletter the subsections of added Section 61.05135, Education Code, appropriately.
- (4) On page 2, line 8, strike "Subsection (a)" and substitute "Subsection (b)".

Amendment No. 1 was adopted.

Amendment No. 2

Representative Branch offered the following amendment to **CSHB 3025**:

Amend **CSHB 3025** (house committee report) as follows:

- (1) On page 6, line 22, strike "30" and substitute "45".
- (2) On page 7, line 3, strike "30" and substitute "45".

Amendment No. 2 was adopted.

CSHB 3025, as amended, was passed to engrossment.

MESSAGE FROM THE SENATE

A message from the senate was received at this time (see the addendum to the daily journal, Messages from the Senate, Message No. 2).

**PROCLAMATION BY THE GOVERNOR
OF THE STATE OF TEXAS**

The chair laid before the house and had read the following proclamation by the governor:

TO THE MEMBERS OF THE SENATE AND HOUSE OF
REPRESENTATIVES OF THE EIGHTY-SECOND TEXAS LEGISLATURE,
REGULAR SESSION:

The Texas Constitution in Article IV, Sections 14 and 15 grants the governor power to approve or disapprove legislation passed by both houses of the legislature. Nothing in that section or the remainder of the Texas Constitution anticipates or describes the process of returning a bill to the legislature for the purpose of clerical correction and amendment once it has been delivered to the governor for review (*Teem v. State*, 79 Tex. Crim. 285, 183 S.W. 1144, 1151 (1916)).

HB 74 by Flynn was passed by the legislature and properly transmitted to my executive office on Friday, April 29, 2011. The legislature has now passed and properly transmitted to me **HCR 148** by Flynn requesting that I return **HB 74** to the legislature so that they may correct a clerical error on the certification page of the bill.

In this instance, I have taken no formal action on **HB 74** and I am agreeing to the request of the legislature. While I am under no obligation to comply with this request, pursuant to established practice and previous case law, I hereby return the enrolled copy of **HB 74** with this message to the house for further correction and consideration by the legislature.

IN TESTIMONY WHEREOF, I have signed my name officially and caused the Seal of the State to be affixed hereto at Austin, this 9th day of May, 2011.

Rick Perry
Governor of Texas

(SEAL)
Esperanza "Hope" Andrade
Secretary of State

CSHB 400 ON SECOND READING

(by Eissler, Aycock, Crownover, C. Anderson, Garza, et al.)

CSHB 400, A bill to be entitled An Act relating to flexibility for public schools to administer primary and secondary education efficiently.

Representative Eissler moved to postpone consideration of **CSHB 400** until 6 p.m. today.

The motion prevailed.

HB 2660 ON SECOND READING

(by J. Davis and Dutton)

HB 2660, A bill to be entitled An Act relating to transferring certain functions of the Texas Department of Housing and Community Affairs to the Texas State Affordable Housing Corporation.

Amendment No. 1

On behalf of Representative Dutton, Representative J. Davis offered the following amendment to **HB 2660**:

Amend **HB 2660** (house committee report) as follows:

- (1) Strike SECTIONS 5, 6, 7, 10, 12, and 13 of the bill.
- (2) On page 9, strike lines 1 through 5 and substitute the following:
 - (1) Section 1372.023(a);
 - (2) Sections 2306.142 and 2306.143; and
 - (3) Subchapter MM, Chapter 2306.
- (3) Strike SECTION 16 of the bill.
- (4) Add the following appropriately numbered SECTIONS to the bill and renumber subsequent SECTIONS of the bill accordingly:

SECTION _____. Section 1372.023, Government Code, is amended by adding Subsection (d) to read as follows:

(d) The Texas Department of Housing and Community Affairs may not issue qualified mortgage bonds after September 1, 2011, except as necessary to complete its activity under the New Issue Bond Program.

SECTION _____. Section 1372.025(b), Government Code, is amended to read as follows:

(b) Subsection (a) does not apply to:

(1) ~~qualified mortgage bonds or~~ qualified residential rental project bonds made available exclusively to the Texas Department of Housing and Community Affairs under Section 1372.023; or

(2) qualified mortgage bonds made available exclusively to the Texas State Affordable Housing Corporation under Sections 1372.0221, ~~and~~ 1372.0222, and 1372.02221.

SECTION _____. Subchapter Y, Chapter 2306, Government Code, is amended by adding Section 2306.5622 to read as follows:

Sec. 2306.5622. TEXAS FIRST-TIME HOMEBUYER PROGRAM. (a) In this section:

(1) "First-time homebuyer" means a person who has not owned a home during the three years preceding the date on which an application under this section is filed.

(2) "Home" means a dwelling in this state in which a first-time homebuyer intends to reside as the homebuyer's principal residence.

(3) "Program" means the Texas First-Time Homebuyer Program.

(b) The Texas First-Time Homebuyer Program shall facilitate the origination of single-family mortgage loans for eligible first-time homebuyers.

(c) The program may include down payment and closing cost assistance.

(d) The corporation shall administer the program.

(e) The board of directors of the corporation shall adopt rules governing:

(1) the administration of the program;

(2) the making of loans under the program;

(3) the criteria for approving participating mortgage lenders;

(4) the use of insurance on the loans and the homes financed under the program, as considered appropriate by the corporation's board to provide additional security for the loans;

(5) the verification of occupancy of the home by the homebuyer as the homebuyer's principal residence; and

(6) the terms of any contract made with any mortgage lender for processing, originating, servicing, or administering the loans.

(f) To be eligible for a mortgage loan under this section, a homebuyer must:

(1) qualify as a first-time homebuyer under this section;

(2) have an income of not more than 115 percent of area median family income or 140 percent of area median family income in targeted areas; and

(3) meet any additional requirements or limitations prescribed by the corporation.

(g) To be eligible for a loan under this section to assist a homebuyer with down payment and closing costs, a homebuyer must:

(1) qualify as a first-time homebuyer under this section;

(2) have an income of not more than 80 percent of area median family income; and

(3) meet any additional requirements or limitations prescribed by the corporation.

(h) The corporation may contract with other agencies of the state or with private entities to determine whether applicants qualify as first-time homebuyers under this section or otherwise to administer all or part of this section.

(i) The board of directors of the corporation may set and collect from each applicant any fees that board considers reasonable and necessary to cover the expenses of administering the program.

(j) The corporation shall ensure that a loan under this section is structured in a way that complies with any requirements associated with the source of the funds used for the loan.

(k) In addition to funds set aside for the program under Section 1372.0223(1), the corporation may solicit and accept funding for the program from gifts and grants for the purposes of this section.

SECTION _____. Section 2306.591(b), Government Code, is amended to read as follows:

(b) An owner of a manufactured home is not eligible to participate in a grant loan program offered by the department~~[, including the single family mortgage revenue bond program under Section 2306.142,]~~ unless the owner complies with Subsection (a).

SECTION _____. (a) As soon as practicable after the effective date of this Act, the Texas Department of Housing and Community Affairs and the Texas State Affordable Housing Corporation shall develop a transition plan for transferring the functions performed by the department under Subchapter MM, Chapter 2306, Government Code, to the corporation. The transition plan must include a timetable with specific steps and deadlines needed to complete the transfer.

(b) In accordance with the transition plan developed by the Texas Department of Housing and Community Affairs and the Texas State Affordable Housing Corporation under Subsection (a) of this section, on November 1, 2011:

(1) all functions and activities relating to Subchapter MM, Chapter 2306, Government Code, performed by the Texas Department of Housing and Community Affairs immediately before that date are transferred to the Texas State Affordable Housing Corporation under Section 2306.5622, Government Code, as added by this Act;

(2) a rule or form adopted by the executive director of the Texas Department of Housing and Community Affairs that relates to Subchapter MM, Chapter 2306, Government Code, is a rule or form of the Texas State Affordable Housing Corporation and remains in effect until amended or replaced by the corporation;

(3) a reference in law to or an administrative rule of the Texas Department of Housing and Community Affairs that relates to Subchapter MM, Chapter 2306, Government Code, means the Texas State Affordable Housing Corporation;

(4) a loan issued by the Texas Department of Housing and Community Affairs under Subchapter MM, Chapter 2306, Government Code, or an application for a loan under that subchapter pending before the department on the effective date of this Act is transferred without change in status to the Texas State Affordable Housing Corporation, and the corporation assumes, as appropriate and without a change in status, the position of the department in relation to that loan or application;

(5) any employee of the Texas Department of Housing and Community Affairs who is primarily involved in administering Subchapter MM, Chapter 2306, Government Code, becomes an employee of the Texas State Affordable Housing Corporation;

(6) all money, contracts, leases, property, and obligations of the Texas Department of Housing and Community Affairs that are related to Subchapter MM, Chapter 2306, Government Code, are transferred to the Texas State Affordable Housing Corporation;

(7) all property that is in the custody of the Texas Department of Housing and Community Affairs and related to Subchapter MM, Chapter 2306, Government Code, is transferred to the Texas State Affordable Housing Corporation; and

(8) the unexpended and unobligated balance of any money that is appropriated by the legislature for the Texas Department of Housing and Community Affairs and related to Subchapter MM, Chapter 2306, Government Code, is transferred to the Texas State Affordable Housing Corporation.

(c) Before November 1, 2011, the Texas Department of Housing and Community Affairs may agree with the Texas State Affordable Housing Corporation to transfer any property of the department to the corporation to implement the transfer required by this Act.

(d) In the period beginning on the effective date of this Act and ending on November 1, 2011, the Texas Department of Housing and Community Affairs shall continue to perform functions and activities under Subchapter MM, Chapter 2306, Government Code, as if that subchapter had not been repealed by this Act, and the former law is continued in effect for that purpose.

SECTION _____. This Act takes effect September 1, 2011.

Amendment No. 1 was adopted.

HB 2660, as amended, was passed to engrossment. (Quintanilla, Rodriguez, and Weber recorded voting no.)

HB 1818 ON SECOND READING
(by Harper-Brown)

HB 1818, A bill to be entitled An Act relating to the continuation and functions of the Texas State Affordable Housing Corporation; providing penalties.

Amendment No. 1

Representative Y. Davis offered the following amendment to **HB 1818**:

Amend **HB 1818** (house committee report) by inserting the following appropriately numbered SECTION to the bill and renumbering subsequent SECTIONS of the bill accordingly:

SECTION _____. Subchapter Y, Chapter 2306, Government Code, is amended by adding 2306.5549 as follows:

Sec. 2306.5549. BOARD MEETINGS. (a) The board may hold meetings when called by the presiding officer, the director, or three of the members.

(b) The board shall keep minutes and complete transcripts of board meetings. The department shall post the transcripts on its website and shall otherwise maintain all accounts, minutes, and other records related to the meetings.

(c) All materials provided to the board that are relevant to a matter proposed for discussion at a board meeting must be posted on the department's website not later than the third day before the date of the meeting.

(d) Any materials made available to the board by the department at a board meeting must be made available in hard copy format to the members of the public in attendance at the meeting.

(e) The board shall conduct its meetings in accordance with Chapter 551, except as otherwise required by this chapter.

(f) For each item on the board's agenda at the meeting, the board shall provide for public comment after the presentation made by department staff and the motions made by

Amendment No. 2

Representative Y. Davis offered the following amendment to Amendment No. 1:

Amend Floor Amendment No. 1 by Rep. Y. Davis to **HB 1818** (house committee report) by striking lines 7-26 and insert the following:

Sec. 2306.5549. BOARD MEETINGS. (a) The board may hold meetings when called by the presiding officer, the director, or three of the members.

(b) The board shall keep minutes and complete transcripts of board meetings. The department shall post the transcripts on its website and shall otherwise maintain all accounts, minutes, and other records related to the meetings.

(c) All materials provided to the board that are relevant to a matter proposed for discussion at a board meeting must be posted on the department's website not later than the third day before the date of the meeting.

(d) Any materials made available to the board by the department at a board meeting must be made available in hard copy format to the members of the public in attendance at the meeting.

(e) The board shall conduct its meetings in accordance with Chapter 551, except as otherwise required by this chapter.

(f) For each item on the board's agenda at the meeting, the board shall provide for public comment after the presentation made by department staff and the motions made by the board on that topic.

(g) The board shall adopt rules that give the public a reasonable amount of time for testimony at meetings.

Amendment No. 2 was adopted.

Amendment No. 1, as amended, was adopted.

Amendment No. 3

On behalf of Representative Gutierrez, Representative Y. Davis offered the following amendment to **HB 1818**:

Amend **HB 1818** (house committee printing) by adding the following appropriately numbered SECTION to the bill and renumbering subsequent SECTIONS of the bill accordingly:

SECTION _____. Subchapter Y, Chapter 2306, Government Code, is amended by adding Section 2306.5553 to read as follows:

Sec. 2306.5553. HISTORICALLY UNDERUTILIZED BUSINESSES. (a) The corporation shall make a good faith effort to provide contracting opportunities for, and to increase contract awards to, historically underutilized businesses for all services that may be required by the corporation, including professional and consulting services and commodities purchases.

(b) In accordance with Subchapter B, Chapter 20, Title 34, Texas Administrative Code, a good faith effort under Subsection (a) must include awarding historically underutilized businesses at least a portion of the total contract value of all contracts the corporation expects to award in a state fiscal year.

(c) The corporation may achieve annual procurement goals under this section by contracting directly with historically underutilized businesses or by contracting indirectly with those businesses through the provision of subcontracting opportunities.

Amendment No. 3 was adopted.

Amendment No. 4

Representative Christian offered the following amendment to **HB 1818**:

Amend **HB 1818** (house committee printing) by adding the following appropriately numbered SECTION to the bill and renumbering subsequent SECTIONS of the bill accordingly:

SECTION _____. Section 392.0331, Local Government Code, is amended by amending Subsections (b) and (f) and adding Subsections (b-1) and (f-1) to read as follows:

(b) Except as provided by Subsection (b-1), in [H] appointing commissioners under Section 392.031, a municipality with a municipal housing authority composed of five commissioners shall appoint at least one commissioner to the authority who is a tenant of a public housing project over which the authority has jurisdiction. In appointing commissioners under Section 392.031, a municipality with a municipal housing authority composed of seven or more commissioners shall appoint at least two commissioners to the authority who are tenants of a public housing project over which the authority has jurisdiction.

(b-1) The presiding officer of the governing body of a municipality that has a municipal housing authority in which the total number of units is 300 or fewer is not required to appoint a tenant to the position of commissioner as otherwise required by Subsection (b) if the presiding officer has provided timely notice of a vacancy in the position to all eligible tenants and is unable to fill the position with an eligible tenant before the 60th day after the date the position becomes vacant.

(f) Except as provided by Subsection (f-1), a [A] commissioner appointed under this section may not serve more than two consecutive two-year terms.

(f-1) Subsection (f) does not apply to a municipality that has a municipal housing authority in which the total number of units is 300 or fewer.

Amendment No. 4 was adopted.

HB 1818, as amended, was passed to engrossment. (Riddle recorded voting no.)

COMMITTEE GRANTED PERMISSION TO MEET

Representative Creighton requested permission for the Select Committee on State Sovereignty to meet while the house is in session, at 6:30 p.m. today, in 3W.9, to consider **HR 243** and pending business.

Permission to meet was granted.

COMMITTEE MEETING ANNOUNCEMENT

The following committee meeting was announced:

Select Committee on State Sovereignty, 6:30 p.m. today, 3W.9, for a formal meeting, to consider **HR 243** and pending business.

**GENERAL STATE CALENDAR
HOUSE BILLS
SECOND READING**

The following bills were laid before the house and read second time:

**CSHB 2825 ON SECOND READING
(by Otto)**

CSHB 2825, A bill to be entitled An Act relating to the composition and appointment of the board of directors of a corporation to which the board of regents of The University of Texas System delegates investment authority for the permanent university fund or other funds under the control of the board of regents.

CSHB 2825 - STATEMENT OF LEGISLATIVE INTENT

REPRESENTATIVE ALONZO: Mr. Otto, I just wanted to visit with you for a few minutes. I know this is an agreed to bill, we had a conversation about that, I'm not interfering with that. But, the reason I want to have a discussion with you is to relate to the qualification in selecting these board members. One of them is that they have experience in investments, is that correct?

REPRESENTATIVE OTTO: That's correct.

ALONZO: And I mentioned to you that one of the interests, or concerns, I had was to make sure that they—not in your bill, but as it relates to the board—that they deal with emergency fund managers that do investments up to \$5 billion. Is that correct?

OTTO: That's correct.

ALONZO: And you mentioned that you didn't want to put it on this bill because you had worked on it. But I told you that was a concern of mine, and I want to make sure that the board members feel about it and that was an interest I had.

OTTO: And the board members currently have the opportunity to appoint those people that you're talking about.

ALONZO: Okay, and the reason I bring it to your attention is I want the board members to know that's a big interest of mine, and I'm sure there's other members on the floor that have this interest, because we want to make sure that they're open in wanting to include folks that have experience in emergency fund managers as it relates up to \$5 billion.

OTTO: That's correct.

REMARKS ORDERED PRINTED

Representative Alonzo moved to print remarks between Representative Otto and Representative Alonzo.

The motion prevailed.

CSHB 2825 was passed to engrossment.

SB 529 ON SECOND READING**(Hunter, Margo, Cook, Guillen, and Woolley - House Sponsors)**

SB 529, A bill to be entitled An Act relating to the regulation of motor vehicle dealers, manufacturers, distributors, and representatives.

SB 529 was considered in lieu of **HB 2293**.

SB 529 was passed to third reading.

HB 2293 - LAID ON THE TABLE SUBJECT TO CALL

Representative Hunter moved to lay **HB 2293** on the table subject to call.

The motion prevailed.

HB 1799 ON SECOND READING**(by Bonnen)**

HB 1799, A bill to be entitled An Act relating to the exemption of certain real estate professionals from registration as property tax consultants.

HB 1799 was passed to engrossment.

SB 1024 ON SECOND READING**(Rodriguez - House Sponsor)**

SB 1024, A bill to be entitled An Act relating to the prosecution of the offense of theft of service.

SB 1024 was considered in lieu of **HB 2196**.

(Bonnen in the chair)

SB 1024 was passed to third reading. (Fletcher and Riddle recorded voting no.)

HB 2196 - LAID ON THE TABLE SUBJECT TO CALL

Representative Rodriguez moved to lay **HB 2196** on the table subject to call.

The motion prevailed.

SB 198 ON SECOND READING**(T. Smith - House Sponsor)**

SB 198, A bill to be entitled An Act relating to exempting persons who are convicted of certain sexual offenses from registering as a sex offender in this state.

SB 198 was considered in lieu of **HB 227**.

Amendment No. 1

Representative Dutton offered the following amendment to **SB 198**:

Amend **SB 198** (house committee report) by adding the following appropriately numbered SECTIONS to the bill and renumbering the remaining SECTIONS of the bill accordingly:

SECTION _____. Section 21.11(b), Penal Code, is amended to read as follows:

(b) It is an affirmative defense to prosecution under this section that the actor:

(1) was ~~[not more than three years older than the victim and]~~ of the opposite sex and not more than three years older than the victim, or not more than five years older if both the actor and victim were enrolled in a public or private school in grade level nine or above at the time of the offense;

(2) did not use duress, force, or a threat against the victim at the time of the offense; and

(3) at the time of the offense:

(A) was not required under Chapter 62, Code of Criminal Procedure, to register for life as a sex offender; or

(B) was not a person who under Chapter 62 had a reportable conviction or adjudication for an offense under this section.

SECTION _____. Section 22.011(e), Penal Code, is amended to read as follows:

(e) It is an affirmative defense to prosecution under Subsection (a)(2):

(1) that the actor was the spouse of the child at the time of the offense;

or

(2) that:

(A) the actor was not more than three years older than the victim, or not more than five years older if both the actor and victim were enrolled in a public or private school in grade level nine or above at the time of the offense, and at the time of the offense:

(i) was not required under Chapter 62, Code of Criminal Procedure, to register for life as a sex offender; or

(ii) was not a person who under Chapter 62, Code of Criminal Procedure, had a reportable conviction or adjudication for an offense under this section; and

(B) the victim:

(i) was a child of 14 years of age or older; and

(ii) was not a person whom the actor was prohibited from marrying or purporting to marry or with whom the actor was prohibited from living under the appearance of being married under Section 25.01.

SECTION _____. Sections 21.11 and 22.011, Penal Code, as amended by this Act, apply only to an offense committed on or after the effective date of this Act. An offense committed before the effective date of this Act is governed by the law in effect at the time of the offense, and the former law is continued in effect for that purpose. For purposes of this section, an offense was committed before the effective date of this Act if any element of the offense occurred before that date.

Amendment No. 1 was withdrawn.

SB 198 was passed to third reading. (Carter and Phillips recorded voting no.)

HB 227 - LAID ON THE TABLE SUBJECT TO CALL

Representative T. Smith moved to lay **HB 227** on the table subject to call.

The motion prevailed.

CSHB 2078 ON SECOND READING

(by Villarreal)

CSHB 2078, A bill to be entitled An Act relating to the independence of appraisal review boards; changing the elements of an offense.

Amendment No. 1

Representative Otto offered the following amendment to **CSHB 2078**:

Amend **CSHB 2078** (house committee report) as follows:

(1) On page 4, strike lines 19-21 and substitute the following:

(1) that constitute social conversation;

(2) On page 4, line 22, strike "(3)" and substitute "(2)".

(3) On page 5, line 1, strike "(4)" and substitute "(3)".

Amendment No. 1 was adopted.

CSHB 2078, as amended, was passed to engrossment. (C. Anderson, Berman, Cook, Flynn, Laubenber, and Sheets recorded voting no.)

SB 758 ON SECOND READING

(Hilderbran - House Sponsor)

SB 758, A bill to be entitled An Act relating to sales and use tax information provided to certain local governmental entities.

SB 758 was considered in lieu of **HB 270**.

SB 758 was passed to third reading.

HB 270 - LAID ON THE TABLE SUBJECT TO CALL

Representative Hilderbran moved to lay **HB 270** on the table subject to call.

The motion prevailed.

CSHB 1671 ON SECOND READING

(by Marquez)

CSHB 1671, A bill to be entitled An Act relating to allowing a governmental body to redact certain personal information under the public information law without the necessity of requesting a decision from the attorney general and the calculation of certain deadlines under the public information law.

Representative Marquez moved to postpone consideration of **CSHB 1671** until 6 a.m. Wednesday, May 11.

The motion prevailed.

CSHB 2203 ON SECOND READING**(by Otto)**

CSHB 2203, A bill to be entitled An Act relating to the pilot program authorizing a property owner to appeal to the State Office of Administrative Hearings certain appraisal review board determinations.

Amendment No. 1

Representative Otto offered the following amendment to **CSHB 2203**:

Amend **CSHB 2203** (house committee printing) by adding the following appropriately numbered SECTION to the bill and renumbering subsequent SECTIONS of the bill accordingly:

SECTION _____. Section 2003.906, Government Code, is amended to read as follows:

Sec. 2003.906. NOTICE OF APPEAL TO OFFICE; DEPOSIT. (a) To appeal an appraisal review board order to the office under this subchapter, a property owner must file with the chief appraiser of the appraisal district ~~[not later than the 30th day after the date the property owner receives notice of the order]~~:

(1) a completed notice of appeal to the office in the form prescribed by Section 2003.907; and

(2) a deposit ~~[filing fee]~~ in the amount of \$1,500 ~~[\$300]~~, made payable to the office.

(a-1) The notice of appeal required under Subsection (a)(1) must be filed with the chief appraiser not later than the 30th day after the date the property owner receives notice of the order.

(a-2) The deposit required under Subsection (a)(2) must be filed with the chief appraiser not later than the 90th day after the date the property owner receives notice of the order. The deposit is refundable:

(1) less the filing fee if the property owner and the appraisal district settle before the appeal is heard; or

(2) less the filing fee and the office's costs if the property owner and the appraisal district settle after the appeal is heard.

(a-3) If the property owner fails to pay the deposit as required under Subsection (a-2):

(1) the office shall dismiss the property owner's appeal; and

(2) the property owner is not entitled to file an appeal under this subchapter in any subsequent tax year.

(b) As soon as practicable after receipt of a notice of appeal, the chief appraiser for the appraisal district shall:

(1) indicate, where appropriate, those entries in the records that are subject to the appeal;

(2) submit the notice of appeal and deposit ~~[filing fee]~~ to the office; and

(3) request the appointment of a qualified administrative law judge to hear the appeal.

Amendment No. 1 was adopted.

CSHB 2203, as amended, was passed to engrossment.

CSHB 2237 ON SECOND READING**(by Lyne, et al.)**

CSHB 2237, A bill to be entitled An Act relating to the taxation and titling of certain off-road vehicles.

CSHB 2237 was passed to engrossment. (Berman, Bohac, Cook, Flynn, Landtroop, Perry, and Weber recorded voting no.)

CSHB 2596 ON SECOND READING**(by Garza)**

CSHB 2596, A bill to be entitled An Act relating to the authority of local governments to enact and enforce certain traffic regulations.

Amendment No. 1

On behalf of Representative Bonnen, Representative Rodriguez offered the following amendment to **CSHB 2596**:

Amend **CSHB 2596** (house committee printing) by striking SECTIONS 1 and 2 of the bill (page 1, lines 5-22) and renumbering remaining SECTIONS of the bill as appropriate.

Amendment No. 1 was adopted.

CSHB 2596, as amended, was passed to engrossment.

HB 2098 ON SECOND READING**(by J. Davis)**

HB 2098, A bill to be entitled An Act relating to the authority of physicians and physician assistants to form certain entities.

Amendment No. 1

Representative J. Davis offered the following amendment to **HB 2098**:

Amend **HB 2098** (house committee report) by striking all below the enacting clause and substituting the following:

SECTION 1. Subchapter B, Chapter 22, Business Organizations Code, is amended by adding Section 22.0561 to read as follows:

Sec. 22.0561. CORPORATIONS FORMED BY PHYSICIANS AND PHYSICIAN ASSISTANTS. (a) Physicians licensed under Subtitle B, Title 3, Occupations Code, and physician assistants licensed under Chapter 204, Occupations Code, may form a corporation to perform a professional service that falls within the scope of practice of those practitioners and consists of:

(1) carrying out research in the public interest in medical science, medical economics, public health, sociology, or a related field;

(2) supporting medical education in medical schools through grants or scholarships;

(3) developing the capabilities of individuals or institutions studying, teaching, or practicing medicine or acting as a physician assistant;

(4) delivering health care to the public; or

(5) instructing the public regarding medical science, public health, hygiene, or a related matter.

(b) A physician assistant may not be an officer of the corporation.

(c) A physician assistant may not contract with or employ a physician to be a supervising physician of the physician assistant or of any physician in the corporation.

(d) The authority of each practitioner is limited by the scope of practice of the respective practitioner. An organizer of the entity must be a physician and ensure that a physician or physicians control and manage the entity.

(e) Nothing in this section may be construed to allow the practice of medicine by someone not licensed as a physician under Subtitle B, Title 3, Occupations Code, or to allow a person not licensed as a physician to direct the activities of a physician in the practice of medicine.

(f) A physician assistant or combination of physician assistants may have only a minority ownership interest in an entity created under this section. The ownership interest of an individual physician assistant may not equal or exceed the ownership interest of any individual physician owner. A physician assistant or combination of physician assistants may not interfere with the practice of medicine by a physician owner or the supervision of physician assistants by a physician owner.

(g) The Texas Medical Board and the Texas Physician Assistant Board continue to exercise regulatory authority over their respective license holders according to applicable law. To the extent of a conflict between Subtitle B, Title 3, Occupations Code, and Chapter 204, Occupations Code, or any rules adopted under those statutes, Subtitle B, Title 3, or a rule adopted under that subtitle controls.

SECTION 2. Subchapter B, Chapter 152, Business Organizations Code, is amended by adding Section 152.0551 to read as follows:

Sec. 152.0551. PARTNERSHIPS FORMED BY PHYSICIANS AND PHYSICIAN ASSISTANTS. (a) Physicians licensed under Subtitle B, Title 3, Occupations Code, and physician assistants licensed under Chapter 204, Occupations Code, may create a partnership to perform a professional service that falls within the scope of practice of those practitioners.

(b) A physician assistant may not be a general partner or participate in the management of the partnership.

(c) A physician assistant may not contract with or employ a physician to be a supervising physician of the physician assistant or of any physician in the partnership.

(d) The authority of each practitioner is limited by the scope of practice of the respective practitioner. An organizer of the entity must be a physician and ensure that a physician or physicians control and manage the entity.

(e) Nothing in this section may be construed to allow the practice of medicine by someone not licensed as a physician under Subtitle B, Title 3, Occupations Code, or to allow a person not licensed as a physician to direct the activities of a physician in the practice of medicine.

(f) A physician assistant or combination of physician assistants may have only a minority ownership interest in an entity created under this section. The ownership interest of an individual physician assistant may not equal or exceed the ownership interest of any individual physician owner. A physician assistant or combination of physician assistants may not interfere with the practice of medicine by a physician owner or the supervision of physician assistants by a physician owner.

(g) The Texas Medical Board and the Texas Physician Assistant Board continue to exercise regulatory authority over their respective license holders according to applicable law. To the extent of a conflict between Subtitle B, Title 3, Occupations Code, and Chapter 204, Occupations Code, or any rules adopted under those statutes, Subtitle B, Title 3, or a rule adopted under that subtitle controls.

SECTION 3. Section 301.012, Business Organizations Code, is amended by adding Subsections (a-1), (a-2), (a-3), (a-4), (a-5), (a-6), and (a-7) to read as follows:

(a-1) Persons licensed as physicians under Subtitle B, Title 3, Occupations Code, and persons licensed as physician assistants under Chapter 204, Occupations Code, may form and own a professional association or a professional limited liability company to perform professional services that fall within the scope of practice of those practitioners.

(a-2) A physician assistant may not be an officer in the professional association or limited liability company.

(a-3) A physician assistant may not contract with or employ a physician to be a supervising physician of the physician assistant or of any physician in the professional association or limited liability company.

(a-4) The authority of each practitioner is limited by the scope of practice of the respective practitioner. An organizer of the entity must be a physician and ensure that a physician or physicians control and manage the entity.

(a-5) Nothing in this section may be construed to allow the practice of medicine by someone not licensed as a physician under Subtitle B, Title 3, Occupations Code, or to allow a person not licensed as a physician to direct the activities of a physician in the practice of medicine.

(a-6) A physician assistant or combination of physician assistants may have only a minority ownership interest in an entity created under this section. The ownership interest of an individual physician assistant may not equal or exceed the ownership interest of any individual physician owner. A physician assistant or combination of physician assistants may not interfere with the practice of medicine by a physician owner or the supervision of physician assistants by a physician owner.

(a-7) The Texas Medical Board and the Texas Physician Assistant Board continue to exercise regulatory authority over their respective license holders according to applicable law. To the extent of a conflict between Subtitle B, Title 3, Occupations Code, and Chapter 204, Occupations Code, or any rules adopted under those statutes, Subtitle B, Title 3, or a rule adopted under that subtitle controls.

SECTION 4. Subchapter B, Chapter 162, Occupations Code, is amended by adding Section 162.053 to read as follows:

Sec. 162.053. JOINTLY OWNED ENTITIES WITH PHYSICIAN ASSISTANTS. (a) A physician who jointly owns an entity with a physician assistant shall report annually to the board the ownership interest and other information required by board rule.

(b) The board shall assess a fee for processing each report required by Subsection (a).

(c) A report filed under Subsection (a) is public information for purposes of Chapter 552, Government Code.

SECTION 5. Subchapter E, Chapter 204, Occupations Code, is amended by adding Section 204.209 to read as follows:

Sec. 204.209. JOINTLY OWNED ENTITIES WITH PHYSICIANS. (a) A physician assistant who jointly owns an entity with a physician shall report annually to the physician assistant board the ownership interest and other information required by physician assistant board rule.

(b) The physician assistant board shall assess a fee for processing each report required by Subsection (a).

(c) A report filed under Subsection (a) is public information for purposes of Chapter 552, Government Code.

SECTION 6. The restrictions on ownership interests in Sections 22.0561, 152.0551, and 301.012, Business Organizations Code, apply to an ownership interest acquired on or after the effective date of this Act. An ownership interest acquired before the effective date of this Act is governed by the law in effect at the time the interest was acquired, and the former law is continued in effect for that purpose.

SECTION 7. This Act takes effect immediately if it receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, this Act takes effect September 1, 2011.

Amendment No. 1 was adopted.

HB 2098, as amended, was passed to engrossment. (Garza recorded voting no.)

CSHB 2746 ON SECOND READING **(by Martinez Fischer)**

CSHB 2746, A bill to be entitled An Act relating to liability for the additional tax imposed on land appraised for ad valorem tax purposes as qualified open-space land in the event of a change of use of the land if the land is transferred to a charitable organization for purposes of building housing for sale without profit to a low-income individual or family.

Representative Marquez moved to postpone consideration of **CSHB 2746** until 6 a.m. tomorrow.

The motion prevailed.

CSHB 2439 ON SECOND READING
(by Gallego)

CSHB 2439, A bill to be entitled An Act relating to posting suggestions and ideas on cost-efficiency on certain state agency websites.

Amendment No. 1

Representative Gallego offered the following amendment to **CSHB 2439**:

Amend **CSHB 2439** (house committee printing) on page 1, line 20, by striking "(a)" and substituting "(b)".

Amendment No. 1 was adopted.

**PROVIDING FOR A LOCAL, CONSENT,
AND RESOLUTIONS CALENDAR**

Representative Thompson moved to suspend all necessary rules to set a local, consent, and resolutions calendar for 10 a.m. Wednesday, May 11.

The motion prevailed.

COMMITTEE GRANTED PERMISSION TO MEET

Representative Thompson requested permission for the Committee on Local and Consent Calendars to meet while the house is in session, at 6:50 p.m. today, in 1W.14, to set a calendar.

Permission to meet was granted.

CSHB 2439 - (consideration continued)

Amendment No. 2

Representative Gallego offered the following amendment to **CSHB 2439**:

Amend **CSHB 2439** (house committee report) by adding the following appropriately numbered SECTIONS to the bill and renumbering the remaining SECTIONS of the bill accordingly:

SECTION _____. Chapter 322, Government Code, is amended by adding Section 322.0081 to read as follows:

Sec. 322.0081. BUDGET DOCUMENTS ONLINE. (a) In order to assist members of the public in posting cost-efficiency suggestions and ideas, the board shall post on the board's Internet website all documents prepared by the board that are provided to a committee, subcommittee, or conference committee of either house of the legislature in connection with an appropriations bill.

(b) The board shall post a document to which this section applies as soon as practicable after the document is provided to a committee, subcommittee, or conference committee.

(c) The document must be downloadable and provide data in an open standard format that allows the public to search, extract, organize, and analyze the information in the document.

SECTION _____. Section 322.0081, Government Code, as added by this Act, applies only to documents provided to a committee, subcommittee, or conference committee on or after October 1, 2011.

Amendment No. 2 was adopted.

CSHB 2439, as amended, was passed to engrossment. (Berman, Cain, Cook, Flynn, Landtroop, and Perry recorded voting no.)

COMMITTEE MEETING ANNOUNCEMENT

The following committee meeting was announced:

Local and Consent Calendars, 6:50 p.m. today, 1W.14, for a formal meeting, to set a calendar.

CSHB 2389 ON SECOND READING

(by Fletcher)

CSHB 2389, A bill to be entitled An Act relating to records of a holder of a motor vehicle title service license.

CSHB 2389 was passed to engrossment.

HB 2889 ON SECOND READING

(by Madden)

HB 2889, A bill to be entitled An Act relating to the expunction of records and files relating to a person's arrest.

HB 2889 was passed to engrossment.

HB 3017 ON SECOND READING

(by Smithee)

HB 3017, A bill to be entitled An Act relating to the prohibited use of discretionary clauses in certain health maintenance organization and insurance contracts.

HB 3017 was passed to engrossment.

CSHB 3036 ON SECOND READING

(by Alvarado)

CSHB 3036, A bill to be entitled An Act relating to the municipal sales and use tax for street maintenance.

Amendment No. 1

Representative Phillips offered the following amendment to **CSHB 3036**:

Amend **CSHB 3036** (house committee printing) as follows:

(1) On page 1, strike lines 12-21 and substitute the following:

(2) the first day of the first calendar quarter occurring not earlier than ~~[after]~~ the fourth anniversary and not later than the tenth anniversary of the date the tax was last reauthorized under this section.

(2) On page 2, line 5, strike "(insert fourth or 10th)" and substitute "(insert "fourth", "fifth", "sixth", "seventh", "eighth", "ninth", or "tenth", as appropriate)".

(3) On page 2, line 10, strike "10-year period" and substitute "period of more than four years but not more than 10 years".

Amendment No. 1 was adopted.

CSHB 3036, as amended, was passed to engrossment. (C. Anderson, Aycock, Berman, Bohac, Cook, Flynn, Landtroop, Laubenberg, Nash, Perry, and Sheets recorded voting no.)

CSHB 3133 ON SECOND READING
(by Rodriguez)

CSHB 3133, A bill to be entitled An Act relating to the appraisal for ad valorem tax purposes of property on which housing is being or has been built or repaired for sale to a low-income individual or family.

CSHB 3133 was passed to engrossment. (Berman, Bohac, Cook, and Flynn recorded voting no.)

CSHB 1359 ON SECOND READING
(by Veasey)

CSHB 1359, A bill to be entitled An Act relating to authorization for a caregiver who is a relative to enroll a child in school.

Representative Deshotel moved to postpone consideration of **CSHB 1359** until 6:45 p.m. today.

The motion prevailed.

HB 2759 ON SECOND READING
(by Hartnett)

HB 2759, A bill to be entitled An Act relating to the nonsubstantive revision of provisions of the Texas Probate Code relating to durable powers of attorney, guardianships, and other related proceedings and alternatives, and the redesignation of certain other provisions of the Texas Probate Code, including conforming amendments and repeals.

HB 2759 was passed to engrossment.

CSHB 1013 ON SECOND READING
(by Brown, Callegari, Creighton, J. Davis, et al.)

CSHB 1013, A bill to be entitled An Act relating to the powers and duties of the Texas Medical Board.

Amendment No. 1

Representative Brown offered the following amendment to **CSHB 1013**:

Amend **CSHB 1013** by adding the following appropriately numbered SECTIONS to the bill and renumbering subsequent SECTIONS of the bill accordingly:

SECTION _____. The legislature finds that tick-borne diseases are an important public health issue in Texas. The legislature further finds that medical and nursing education on the appropriate care and treatment of tick-borne diseases is essential to the delivery of necessary health care to individuals in Texas suffering from tick-borne diseases. It is the intent of the legislature to address the need for medical and nursing education on tick-borne diseases through the continuing medical education requirements for physicians and nurses.

SECTION _____. Subchapter B, Chapter 156, Occupations Code, is amended by adding Section 156.059 to read as follows:

Sec. 156.059. CONTINUING EDUCATION IN TICK-BORNE DISEASES. (a) A physician licensed under this subtitle who submits an application for renewal of a license to practice medicine and whose practice includes the treatment of tick-borne diseases is encouraged to include continuing medical education in the treatment of tick-borne diseases among the hours of continuing medical education completed for purposes of rules adopted under Section 156.051(a)(2).

(b) The board shall adopt rules to establish the content of and approval requirements for continuing medical education relating to the treatment of tick-borne diseases. In adopting rules, the board shall review relevant courses, including courses that have been approved in other states. Rules adopted under this section must provide for the identification and approval of accredited continuing medical education courses that represent an appropriate spectrum of relevant medical clinical treatment relating to tick-borne diseases.

(c) If relevant, the board shall consider a physician's participation in a continuing medical education course approved under Subsection (b) if:

(1) the physician is being investigated by the board regarding the physician's selection of clinical care for the treatment of tick-borne diseases; and

(2) the physician completed the course not more than two years before the start of the investigation.

(d) The board may adopt other rules to implement this section.

SECTION _____. Subchapter G, Chapter 301, Occupations Code, is amended by adding Section 301.304 to read as follows:

Sec. 301.304. CONTINUING EDUCATION IN TICK-BORNE DISEASES. (a) As part of the continuing education requirements under Section 301.303, a license holder whose practice includes the treatment of tick-borne diseases shall be encouraged to participate, during each two-year licensing period, in continuing education relating to the treatment of tick-borne diseases.

(b) The board shall adopt rules to identify the license holders who are encouraged to complete continuing education under Subsection (a) and establish the content of that continuing education. In adopting rules, the board shall review relevant courses, including courses that have been approved in other states. Rules adopted under this section must provide for the identification and approval of accredited continuing education courses that represent an appropriate spectrum of relevant medical clinical treatment relating to tick-borne diseases.

(c) If relevant, the board shall consider a license holder's participation in a continuing education course approved under Subsection (b) if:

(1) the license holder is being investigated by the board regarding the license holder's selection of clinical care for the treatment of tick-borne diseases; and

(2) the license holder completed the course not more than two years before the start of the investigation.

(d) The board may adopt other rules to implement this section, including rules under Section 301.303(c) for the approval of education programs and providers.

SECTION _____. The Texas Medical Board and the Texas Board of Nursing shall consult and cooperate in adopting the rules required under Sections 156.059 and 301.304, Occupations Code, as added by this Act.

SECTION _____. Not later than January 31, 2012, the Texas Medical Board shall adopt rules required by Section 156.059, Occupations Code, as added by this Act.

SECTION _____. Not later than January 31, 2012, the Texas Board of Nursing shall adopt rules required by Section 301.304, Occupations Code, as added by this Act.

SECTION _____. Not later than February 6, 2012, the Texas Medical Board and the Texas Board of Nursing shall report to the governor, the lieutenant governor, and the speaker of the house of representatives concerning the adoption of rules as required by Sections 156.059 and 301.304, Occupations Code, as added by this Act.

SECTION _____. Sections 156.059(c) and 301.304(c), Occupations Code, as added by this Act, apply only to the investigation of a complaint or a disciplinary action based on a complaint filed on or after the effective date of this Act. The investigation of a complaint or a disciplinary action based on a complaint filed before that date is governed by the law in effect on the date the complaint was filed, and that law is continued in effect for that purpose.

Amendment No. 1 was adopted.

Amendment No. 2

Representative D. Howard offered the following amendment to **CSHB 1013**:

Amend **CSHB 1013** (house committee printing) as follows:

(1) On page 3, line 4, strike "or".

(2) On page 3, line 5, after the semicolon, insert the following:

or

(D) a registered nurse or a licensed vocational nurse;

(3) On page 4, line 4, strike "or".

(4) On page 4, line 5, strike the period and substitute the following:

; or

(D) a registered nurse or a licensed vocational nurse.

Amendment No. 2 was adopted.

Amendment No. 3

Representative Naishtat offered the following amendment to **CSHB 1013**:

Amend **CSHB 1013** (house committee report) as follows:

1. Page 10, line 3, strike the designation Subsection "(a)".

2. Page 10, strike Subsection (b), lines 8 through 10.

Amendment No. 3 was adopted.

Amendment No. 4

Representative Zedler offered the following amendment to **CSHB 1013**:

Amend **CSHB 1013** (house committee printing) by adding the following appropriately numbered SECTION to the bill and renumbering subsequent SECTIONS of the bill accordingly:

SECTION _____. Section 164.0032, Occupations Code, is amended by adding Subsection (f-1) to read as follows:

(f-1) At least 21 days before the date the board conducts a meeting to consider the panel's recommendations under Subsection (f), the board must notify the affected physician and the physician's authorized representative of the meeting. The physician and the physician's representative may be present at the meeting.

Amendment No. 4 was adopted.

Amendment No. 5

Representative Chisum offered the following amendment to **CSHB 1013**:

Amend **CSHB 1013** by adding a new appropriately numbered section to read as follows:

SECTION _____. Section 155.056(a), Occupations Code, is amended to read as follows:

(a) An applicant must pass each part of an examination within four~~three~~ attempts.

Representative Schwertner moved to table Amendment No. 5.

The motion to table prevailed.

CSHB 1013, as amended, was passed to engrossment by (Record 864): 147 Yeas, 0 Nays, 1 Present, not voting.

Yeas — Aliseda; Allen; Alonzo; Alvarado; Anchia; Anderson, C.; Anderson, R.; Aycock; Beck; Berman; Bohac; Bonnen(C); Branch; Brown; Burkett; Burnam; Button; Cain; Callegari; Carter; Castro; Chisum; Christian; Cook; Craddick; Creighton; Crownover; Darby; Davis, J.; Davis, S.; Davis, Y.; Deshotel; Driver; Dukes; Dutton; Eiland; Eissler; Elkins; Farias; Farrar; Fletcher; Flynn; Frullo; Gallego; Garza; Geren; Giddings; Gonzales, L.; Gonzales, V.; Gonzalez; Gooden; Guillen; Gutierrez; Hamilton; Hancock; Hardcastle; Harless; Harper-Brown; Hartnett; Hernandez Luna; Hilderbran; Hochberg; Hopson; Howard, C.; Howard, D.; Huberty; Hughes; Hunter; Isaac; Jackson; Johnson; Keffer; King, P.; King, S.; King, T.; Kleinschmidt; Kolkhorst; Kuempel; Landtroop; Larson; Laubenberg; Lavender; Legler; Lewis; Lozano; Lucio; Lyne; Madden; Mallory Caraway; Margo; Marquez; Martinez; Martinez Fischer; McClendon; Menendez; Miles; Miller, D.; Miller, S.; Morrison; Muñoz; Murphy; Naishtat; Nash; Oliveira; Orr; Otto; Parker; Patrick; Paxton; Peña; Perry; Phillips; Pickett; Pitts; Price; Quintanilla; Raymond; Reynolds; Riddle; Ritter; Rodriguez; Schwertner; Scott; Sheets; Sheffield; Simpson; Smith, T.; Smith, W.; Smithee;

Solomons; Strama; Taylor, L.; Taylor, V.; Thompson; Torres; Truitt; Turner; Veasey; Villarreal; Vo; Walle; Weber; White; Woolley; Workman; Zedler; Zerwas.

Present, not voting — Mr. Speaker.

Absent, Excused — Coleman.

Absent — Shelton.

CSHB 3727 ON SECOND READING
(by Hilderbran and Martinez Fischer)

CSHB 3727, A bill to be entitled An Act relating to the appraisal for ad valorem tax purposes of certain commercial aircraft that are temporarily located in this state for manufacturing or assembly purposes.

CSHB 3727 was passed to engrossment.

HB 174 ON SECOND READING
(by Jackson, Burkett, Branch, Bohac, Patrick, et al.)

HB 174, A bill to be entitled An Act relating to the cancellation of the voter registration and to the eligibility to vote of persons who are deceased or not citizens of the United States.

HB 174 was passed to engrossment.

HB 2817 ON SECOND READING
(by L. Taylor)

HB 2817, A bill to be entitled An Act relating to certain election practices and procedures.

Amendment No. 1

Representative Price offered the following amendment to **HB 2817**:

Amend **HB 2817** (house committee printing) on page 15, line 17, by striking "and" and substituting "127.201, and".

Amendment No. 1 was adopted.

COMMITTEES GRANTED PERMISSION TO MEET

Representative Dutton requested permission for the Committee on Urban Affairs to meet while the house is in session, at 7 p.m. today, in 3W.15, to consider pending business.

Permission to meet was granted.

Representative Guillen requested permission for the Committee on Culture, Recreation, and Tourism to meet while the house is in session, at 7:15 p.m. today, in 1W.14, to consider pending business.

Permission to meet was granted.

COMMITTEE MEETING ANNOUNCEMENTS

The following committee meetings were announced:

Urban Affairs, 7 p.m. today, 3W.15, for a formal meeting, to consider pending business.

Culture, Recreation, and Tourism, 7:15 p.m. today, 1W.14, for a formal meeting, to consider pending business.

HB 2817 - (consideration continued)

Amendment No. 2

Representative T. Smith offered the following amendment to **HB 2817**:

Amend **HB 2817** by adding the following appropriately numbered SECTIONS and by renumbering the existing SECTIONS as appropriate:

SECTION _____. Section 4.004(a), Election Code, is amended to read as follows:

- (a) The notice of a general or special election must state:
 - (1) the nature and date of the election;
 - (2) except as provided by Subsection (c), the location of each polling place~~[-, including each early voting polling place];~~
 - (3) the hours that the polls will be open; and
 - (4) any other information required by other law.

SECTION _____. Section 85.004, Election Code, is amended to read as follows:

Sec. 85.004. PUBLIC NOTICE OF MAIN POLLING PLACE LOCATION. The election order and the election notice must state the location of the main ~~[each]~~ early voting polling place.

Amendment No. 2 was adopted.

Amendment No. 3

Representative Sheffield offered the following amendment to **HB 2817**:

Amend **HB 2817** by adding the following appropriately numbered SECTIONS to the bill and renumbering subsequent SECTIONS of the bill accordingly:

SECTION _____. Section 13.031(d), Election Code, is amended to read as follows:

(d) To be eligible for appointment as a volunteer deputy registrar, a person must:

- (1) be a registered voter ~~[18 years of age or older]; [and]~~
- (2) not have been finally convicted of a felony or, if so convicted, must have:

(A) fully discharged the person's sentence, including any term of incarceration, parole, or supervision, or completed a period of probation ordered by any court; or

(B) been pardoned or otherwise released from the resulting disability to vote; and

(3) not have been finally convicted of an offense under Section 32.51, Penal Code.

SECTION _____. Section 13.033(b), Election Code, is amended to read as follows:

(b) If a person is to be appointed, the registrar shall prepare a certificate of appointment in duplicate containing:

(1) the date of appointment;

(2) the statement: "I, _____, Voter Registrar for _____ County, do hereby appoint _____ as a volunteer deputy registrar for _____ County.";

(3) the person's residence address;

(4) the person's voter registration number, if any;

(5) a statement that the term of the appointment expires December 31 of an even-numbered year; and

(6) a statement that the appointment:

(A) terminates on the person's final conviction for an offense:

(i) for failure to deliver a registration application; or

(ii) under Section 32.51, Penal Code; and

(B) may terminate on the registrar's determination that the person failed to adequately review a registration application.

SECTION _____. Section 13.036(a), Election Code, is amended to read as follows:

(a) An appointment as a volunteer deputy registrar is terminated on:

(1) the expiration of the volunteer deputy's term of appointment; or

(2) the final conviction of the volunteer deputy for an offense prescribed by Section 13.043 of this code or Section 32.51, Penal Code.

SECTION _____. Sections 13.031(d), 13.033(b), and 13.036(a), Election Code, as amended by this Act, apply only to the appointment of a volunteer deputy voter registrar on or after the effective date of this Act. The appointment of a volunteer deputy voter registrar before the effective date of this Act is governed by the law in effect when the registrar was appointed, and the former law is continued in effect for that purpose.

Amendment No. 3 was adopted.

Amendment No. 4

Representative Burkett offered the following amendment to **HB 2817**:

Amend **HB 2817** by adding the following appropriately numbered SECTIONS to the bill and renumbering subsequent SECTIONS of the bill accordingly:

SECTION _____. Section 64.036(d), Election Code, is amended to read as follows:

(d) An offense under this section is a state jail felony [~~Class A misdemeanor~~].

SECTION _____. Section 86.0051, Election Code, is amended by adding Subsection (b-1) and amending Subsections (c), (d), and (e) to read as follows:

(b-1) A person may not deposit in the mail or with a common or contract carrier more than two carrier envelopes containing ballots voted by other persons in an election.

(c) A person commits an offense if the person knowingly violates Subsection (b) or (b-1). It is not a defense to an offense under this subsection that the voter voluntarily gave another person possession of the voter's carrier envelope.

(d) An offense under this section is a state jail felony [~~Class-B misdemeanor~~], unless the person is convicted of an offense under Section 64.036 for providing unlawful assistance to the same voter in connection with the same ballot, in which event the offense is a [~~state-jail~~] felony of the third degree.

(e) Subsections (a) and (c) do not apply if the person is related to the applicant within the second degree by affinity or the third degree by consanguinity, as determined under Subchapter B, Chapter 573, Government Code[, ~~or is registered to vote at the same address as the applicant~~]. Subsection (c) does not apply to an employee of a state licensed care facility where the voter resides who is working in the normal course of the employee's authorized duties.

SECTION _____. Section 86.006(f), Election Code, is amended to read as follows:

(f) A person commits an offense if the person knowingly possesses an official ballot or official carrier envelope provided under this code to another. Unless the person possessed the ballot or carrier envelope with intent to defraud the voter or the election authority, this subsection does not apply to a person who, on the date of the offense, was:

(1) related to the voter within the second degree by affinity or the third degree by consanguinity, as determined under Subchapter B, Chapter 573, Government Code;

(2) registered to vote at the same address as the voter;

(3) an early voting clerk or a deputy early voting clerk;

(4) a person who possesses the carrier envelope in order to deposit the envelope in the mail or with a common or contract carrier and who provides the information required by Section 86.0051(b) in accordance with that section;

(5) an employee of the United States Postal Service working in the normal course of the employee's authorized duties; ~~or~~

(6) a common or contract carrier working in the normal course of the carrier's authorized duties if the official ballot is sealed in an official carrier envelope that is accompanied by an individual delivery receipt for that particular carrier envelope; or

(7) an employee of a state licensed care facility where the voter resides who is working in the normal course of the employee's authorized duties.

SECTION _____. Sections 86.010(g) and (h), Election Code, are amended to read as follows:

(g) An offense under this section is a state jail felony [~~Class-A misdemeanor~~] unless the person is convicted of an offense under Section 64.036 for providing unlawful assistance to the same voter, in which event the offense is a [~~state-jail~~] felony of the third degree.

(h) Subsection (f) does not apply if the person is related to the applicant within the second degree by affinity or the third degree by consanguinity, as determined under Subchapter B, Chapter 573, Government Code~~[, or is registered to vote at the same address as the applicant]~~.

SECTION _____. The changes in law made by this Act to Sections 64.036, 86.0051, 86.006, and 86.010, Election Code, apply only to an offense committed on or after the effective date of this Act. An offense committed before the effective date of this Act is governed by the law in effect on the date the offense was committed, and the former law is continued in effect for that purpose. For purposes of this section, an offense was committed before the effective date of this Act if any element of the offense occurred before that date.

Amendment No. 4 was adopted.

Amendment No. 5

Representative V. Taylor offered the following amendment to **HB 2817**:

Amend **HB 2817** by adding the following appropriately numbered SECTION to the bill and renumbering subsequent SECTIONS of the bill appropriately:

SECTION _____. Section 129.023(c), Election Code, is amended to read as follows:

(c) The general custodian of election records shall adopt procedures for testing that:

- (1) direct the testing board to cast votes;
- (2) verify that each contest position, as well as each precinct and ballot style, on the ballot can be voted and is accurately counted ~~[for each precinct and ballot style]~~;
- (3) include overvotes and undervotes for each race, if applicable to the system being tested;
- (4) include straight-party votes and crossover votes;
- (5) include write-in votes, when applicable to the election;
- (6) include provisional votes, if applicable to the system being tested;
- (7) calculate the expected results from the test ballots;
- (8) ensure that each voting machine has any public counter reset to zero and presented to the testing board for verification before testing;
- (9) require that, for each feature of the system that allows disabled voters to cast a ballot, at least one vote be cast and verified by a two-person testing board team using that feature; and
- (10) require that, when all votes are cast, the general custodian of election records and the testing board observe the tabulation of all ballots and compare the actual results to the expected results.

Amendment No. 5 was adopted.

Amendment No. 6

Representative Isaac offered the following amendment to **HB 2817**:

Amend **HB 2817** by adding the following appropriately numbered SECTION to the bill and renumbering the remaining SECTIONS of the bill accordingly:

SECTION _____. Subchapter C, Chapter 85, Election Code, is amended by adding Section 85.073 to read as follows:

Sec. 85.073. MOBILE VOTING STATIONS IN CERTAIN COUNTIES IN CERTAIN ELECTIONS. (a) This section applies to early voting in an election that includes a bond proposition in a city or school district located in a county with a population of more than one million.

(b) If a mobile voting station is used, the mobile voting station:

(1) may not change locations during the early voting period; and

(2) shall be placed within the territory covered by the election in a manner to allow all of the voters in the territory the same access to the mobile voting station during the early voting period.

Amendment No. 6 was adopted.

Amendment No. 7

Representative Isaac offered the following amendment to **HB 2817**:

Amend **HB 2817** (house committee printing) by adding the following appropriately numbered SECTIONS to the bill and renumbering subsequent SECTIONS of the bill accordingly:

SECTION _____. Section 84.007(b), Election Code, is amended to read as follows:

(b) An application must be submitted to the early voting clerk by:

(1) mail;

(2) common or contract carrier; or

(3) telephonic facsimile machine, ~~[if the applicant is absent from the county and]~~ if a machine is available in the clerk's office.

SECTION _____. Subchapter B, Chapter 87, Election Code, is amended by adding Section 87.0211 to read as follows:

Sec. 87.0211. ELECTRONIC DELIVERY OF MATERIALS RECORDED ELECTRONICALLY. If ballot materials and ballot applications are recorded electronically as provided by Section 87.126, the early voting clerk may deliver those materials to the early voting ballot board through electronic means.

SECTION _____. Section 87.027, Election Code, is amended by adding Subsection (m) to read as follows:

(m) If ballot materials or ballot applications are recorded electronically as provided by Section 87.126, the signature verification committee may use an electronic copy of a carrier envelope certificate or the voter's ballot application in making the comparison under Subsection (i).

SECTION _____. Subchapter G, Chapter 87, Election Code, is amended by adding Section 87.126 to read as follows:

Sec. 87.126. ELECTRONIC RECORDING OF BALLOT MATERIALS AND APPLICATIONS. (a) The early voting clerk may electronically record applications for a ballot to be voted by mail, jacket envelopes, carrier envelopes, and ballots.

(b) The secretary of state may adopt rules providing requirements for the electronic image quality and storage of the electronic images of the documents described by Subsection (a).

Amendment No. 7 was adopted.

Amendment No. 8

Representative Murphy offered the following amendment to **HB 2817**:

Amend **HB 2817** by adding the following appropriately numbered SECTION and by renumbering the existing SECTIONS as appropriate:

SECTION _____. Chapter 1, Election Code, is amended by adding Section 1.016 to read as follows:

Sec. 1.016. RESIDENCE FOR CERTAIN REGISTERED VOTERS.

(a) For purposes of registration under this code, a person's residence is established at the first residence address in the following list that is applicable to the person:

(1) the address the person claims as a homestead in this state;

(2) the address stated on a driver's license issued to the person by the Department of Public Safety that has not expired or, if the person has notified the department of a change of address under Section 521.054, Transportation Code, the new address contained in the notification;

(3) the address stated on a personal identification card issued to the person by the Department of Public Safety that has not expired or, if the person has notified the department of a change of address under Section 521.054, Transportation Code, the new address contained in the notification;

(4) the address stated on a license to carry a concealed handgun issued to the person by the Department of Public Safety that has not expired or, if the person has notified the department of a change of address under Section 411.181, Government Code, the new address contained in the notification; or

(5) an address corresponding to a residence at which the person receives mail.

(b) The address described by Subsection (a)(5) may not be a commercial post office box or similar location that does not correspond to a residence.

(c) This section does not apply to:

(1) a person who is a member of the armed forces of the United States or the spouse or a dependent of a member; or

(2) a person enrolled as a full-time student at an institution of higher education.

(d) The secretary of state shall adopt rules as necessary to implement this section.

Amendment No. 8 was adopted by (Record 865): 92 Yeas, 48 Nays, 2 Present, not voting.

Yeas — Aliseda; Anderson, C.; Anderson, R.; Aycock; Beck; Berman; Bohac; Branch; Brown; Burkett; Button; Cain; Callegari; Carter; Chisum; Christian; Cook; Craddick; Creighton; Crownover; Davis, J.; Davis, S.; Driver; Eissler; Fletcher; Flynn; Frullo; Garza; Geren; Gonzales, L.; Gooden; Hamilton;

Hardcastle; Harless; Hilderbran; Hopson; Huberty; Hughes; Hunter; Isaac; Jackson; Keffer; King, P.; King, S.; Kleinschmidt; Kolkhorst; Kuempel; Landtroop; Larson; Laubenberg; Lavender; Legler; Lewis; Lyne; Madden; Margo; Miller, D.; Miller, S.; Morrison; Murphy; Nash; Orr; Otto; Parker; Patrick; Peña; Perry; Phillips; Pitts; Price; Riddle; Ritter; Schwertner; Scott; Sheets; Sheffield; Shelton; Simpson; Smith, T.; Smith, W.; Smithee; Solomons; Taylor, L.; Taylor, V.; Torres; Truitt; Weber; White; Woolley; Workman; Zedler; Zerwas.

Nays — Allen; Alonzo; Alvarado; Anchia; Burnam; Castro; Davis, Y.; Deshotel; Dukes; Dutton; Eiland; Farias; Farrar; Gallego; Giddings; Gonzales, V.; Gonzalez; Guillen; Gutierrez; Hernandez Luna; Hochberg; Howard, D.; Johnson; King, T.; Lozano; Lucio; Mallory Caraway; Marquez; Martinez; Martinez Fischer; McClendon; Menendez; Miles; Muñoz; Naishtat; Oliveira; Pickett; Quintanilla; Raymond; Reynolds; Rodriguez; Strama; Thompson; Turner; Veasey; Villarreal; Vo; Walle.

Present, not voting — Mr. Speaker; Bonnen(C).

Absent, Excused — Coleman.

Absent — Darby; Elkins; Hancock; Harper-Brown; Hartnett; Howard, C.; Paxton.

STATEMENTS OF VOTE

When Record No. 865 was taken, I was in the house but away from my desk. I would have voted yes.

Harper-Brown

When Record No. 865 was taken, I was in the house but away from my desk. I would have voted yes.

Paxton

Amendment No. 9

Representative Zedler offered the following amendment to **HB 2817**:

Amend **HB 2817** (house committee report) by adding the following appropriately numbered SECTIONS to the bill and renumbering the remaining SECTIONS of the bill accordingly:

SECTION _____. Section 32.075, Election Code, is amended by adding Subsections (f) and (g) to read as follows:

(f) The presiding judge or a special peace officer appointed under this section may not remove an alternate presiding judge from the polling place without:

(1) the approval of the county clerk, county elections administrator, or similar official administering the election for a political subdivision; and

(2) the documentation and certification by the presiding judge of the reason for removal.

(g) A person is eligible for appointment as a special peace officer under Subsection (b) only if the person is licensed as a peace officer by the Commission on Law Enforcement Officer Standards and Education.

SECTION _____. Subchapter A, Chapter 33, Election Code, is amended by adding Section 33.008 to read as follows:

Sec. 33.008. CONFIDENTIAL INFORMATION. (a) During the administration of the election, any information provided by a watcher under this chapter that may be used to identify the watcher is confidential and may be used only for election administration purposes. The information may be made available to the public beginning on the day after election day.

(b) It is an offense to disclose information described by Subsection (a) during the administration of the election without the permission of the watcher.

(c) An offense under this section is a Class B misdemeanor.

Amendment No. 9 was adopted by (Record 866): 71 Yeas, 67 Nays, 3 Present, not voting. (The vote was reconsidered later today, and Amendment No. 9 was withdrawn.)

Yeas — Aliseda; Anderson, C.; Anderson, R.; Beck; Berman; Branch; Brown; Cain; Callegari; Carter; Chisum; Cook; Craddick; Creighton; Darby; Driver; Fletcher; Flynn; Frullo; Garza; Gonzales, L.; Hamilton; Hardcastle; Harless; Harper-Brown; Howard, C.; Huberty; Hughes; Hunter; Isaac; Jackson; Keffer; King, P.; King, S.; Kleinschmidt; Kolkhorst; Kuempel; Landtroop; Larson; Laubenberg; Legler; Lyne; Miller, D.; Miller, S.; Morrison; Murphy; Orr; Otto; Parker; Patrick; Peña; Perry; Phillips; Pitts; Riddle; Ritter; Schwertner; Sheets; Sheffield; Shelton; Smith, T.; Smith, W.; Smithee; Solomons; Taylor, V.; Torres; Truitt; White; Woolley; Zedler; Zerwas.

Nays — Allen; Alonzo; Alvarado; Anchia; Aycock; Bohac; Burkett; Burnam; Castro; Crownover; Davis, J.; Davis, S.; Davis, Y.; Deshotel; Dukes; Dutton; Eiland; Farias; Farrar; Gallego; Giddings; Gonzales, V.; Gonzalez; Gooden; Guillen; Gutierrez; Hartnett; Hernandez Luna; Hilderbran; Hochberg; Hopson; Howard, D.; Johnson; Lavender; Lewis; Lozano; Lucio; Madden; Mallory Caraway; Margo; Marquez; Martinez; Martinez Fischer; McClendon; Menendez; Miles; Muñoz; Naishtat; Nash; Oliveira; Pickett; Price; Quintanilla; Raymond; Reynolds; Rodriguez; Scott; Simpson; Strama; Thompson; Turner; Veasey; Villarreal; Vo; Walle; Weber; Workman.

Present, not voting — Mr. Speaker; Bonnen(C); Button.

Absent, Excused — Coleman.

Absent — Christian; Eissler; Elkins; Geren; Hancock; King, T.; Paxton; Taylor, L.

STATEMENTS OF VOTE

When Record No. 866 was taken, I was in the house but away from my desk. I would have voted no.

Geren

When Record No. 866 was taken, I was in the house but away from my desk. I would have voted yes.

Paxton

Amendment No. 9 - Vote Reconsidered

Representative Zedler moved to reconsider the vote by which Amendment No. 9 was adopted.

The motion to reconsider prevailed.

Amendment No. 9 was withdrawn.

Amendment No. 10

Representative Martinez Fischer offered the following amendment to **HB 2817**:

Amend **HB 2817** (house committee printing) by adding the following appropriately numbered SECTION to the bill and renumbering subsequent SECTIONS of the bill accordingly:

SECTION _____. Subchapter B, Chapter 171, Election Code, is amended by adding Section 171.029 to read as follows:

Sec. 171.029. REMOVAL OF COUNTY CHAIR. (a) In this section:

(1) "Incompetency" means:

(A) gross ignorance of official duties;

(B) gross carelessness in the discharge of official duties; or

(C) unfitness or inability to promptly and properly discharge official duties because of a serious physical or mental defect that did not exist at the time of the county chair's election.

(2) "Official misconduct" means intentional, unlawful behavior relating to a county chair's official duties. The term includes an intentional or corrupt failure, refusal, or neglect of a county chair to perform an official duty.

(b) The state executive committee of a political party may call a hearing on the issue of removing the county chair for incompetency or official misconduct in response to a complaint from a member of the political party in the county from which the chair was elected.

(c) The state executive committee shall give notice to the county chair not later than the 14th day before the date of the hearing, stating the allegations of incompetency or official misconduct. At the hearing, evidence must be presented of the chair's incompetency or official misconduct, and the county chair shall have the opportunity to examine or question the evidence against the chair.

(d) After conducting the hearing and reviewing the evidence, the state executive committee shall vote on the question of the removal of the county chair. If at least three-fifths of the membership of the state executive committee finds that the county chair has demonstrated incompetency or committed official misconduct, the committee shall suspend any party rules to the extent necessary to remove the chair.

(e) The county executive committee shall fill a vacancy created by the removal of a county chair under this section as provided by Sections 171.024 and 171.025, except that the appointment must be approved by three-fifths of the membership of the state executive committee.

Amendment No. 10 was adopted. (Aycock, Cook, Driver, Hunter, Kuempel, Phillips, and Schwertner recorded voting no.)

Amendment No. 11

Representative P. King offered the following amendment to **HB 2817**:

Amend **HB 2817** by adding the following appropriately numbered SECTIONS to the bill and renumbering the remaining SECTIONS of the bill accordingly:

SECTION _____. Section 101.001, Election Code, is amended to read as follows:

Sec. 101.001. ELIGIBILITY. (a) A person is eligible for early voting by mail as provided by this chapter if:

(1) the person is qualified to vote in this state or, if not registered to vote in this state, would be qualified if registered; and

(2) the person is:

(A) a member of the armed forces of the United States, or the spouse or a dependent of a member;

(B) a member of the merchant marine of the United States, or the spouse or a dependent of a member; or

(C) domiciled in this state but temporarily living outside the territorial limits of the United States and the District of Columbia.

(b) Notwithstanding Subsection (a) and Chapter 114, a person who indicates on a federal postcard application that the person is a United States citizen residing outside the United States indefinitely is entitled to vote a full ballot as provided by this chapter if the person is otherwise eligible to vote under this chapter and is a registered voter at the address contained on the application.

SECTION _____. The change in law made by this Act applies to a federal postcard application that requests a ballot for an election that is held on or after the effective date of this Act.

Amendment No. 11 was adopted.

Amendment No. 12

Representative Gallego offered the following amendment to **HB 2817**:

Amend **HB 2817** by adding the following appropriately numbered SECTION to the bill and renumbering the remaining SECTIONS of the bill accordingly:

SECTION _____. Subchapter A, Chapter 141, Election Code, is amended by adding Section 141.005 to read as follows:

Sec. 141.005. RESIDENCY REQUIREMENT IN CERTAIN POLITICAL SUBDIVISIONS. (a) This section applies only to a political subdivision that:

(1) is located in a county with territory greater than 4,600 square miles;
and

(2) is either:

(A) an independent school district servicing less than 1,500 students; or

(B) a municipality with a population of less than 8,000.

(b) Notwithstanding Section 141.001, a municipal charter provision, or any other law, a candidate for the governing body of an independent school district or a municipality is eligible for any position of the governing body if the candidate resides anywhere in the territory from which any member of the governing body is elected.

Amendment No. 12 was adopted.

Amendment No. 13

Representative Parker offered the following amendment to **HB 2817**:

Amend **HB 2817** by adding the following appropriately numbered SECTIONS to the bill and renumbering subsequent SECTIONS of the bill accordingly:

SECTION _____. Subchapter A, Chapter 13, Election Code, is amended by adding Section 13.008 to read as follows:

Sec. 13.008. PERFORMANCE-BASED COMPENSATION FOR REGISTERING VOTERS PROHIBITED. (a) A person commits an offense if the person:

(1) compensates another person based on the number of voter registrations that the other person successfully facilitates;

(2) presents another person with a quota of voter registrations to facilitate as a condition of payment or employment;

(3) engages in another practice that causes another person's compensation from or employment status with the person to be dependent on the number of voter registrations that the other person facilitates; or

(4) accepts compensation for an activity described by Subdivision (1), (2), or (3).

(b) An offense under this section is a Class A misdemeanor.

(c) An officer, director, or other agent of an entity that commits an offense under this section is punishable for the offense.

SECTION _____. Section 13.036(a), Election Code, is amended to read as follows:

(a) An appointment as a volunteer deputy registrar is terminated on:

(1) the expiration of the volunteer deputy's term of appointment; or

(2) the final conviction of the volunteer deputy for an offense prescribed by Section 13.008 or 13.043.

Amendment No. 13 was adopted.

Amendment No. 14

Representative Alonzo offered the following amendment to **HB 2817**:

Amend **HB 2817** (house committee report) by adding the following appropriately numbered SECTION to the bill and renumbering the remaining SECTIONS of the bill accordingly:

SECTION _____. Subchapter A, Chapter 43, Election Code, is amended by adding Section 43.008 to read as follows:

Sec. 43.008. MAIN POLLING PLACE FOR CERTAIN VOTERS. (a) An authority conducting an election may establish on election day an additional polling place at the location of the main early voting polling place that is open during the first two hours of voting and during the last two hours of voting.

(b) A voter may cast a ballot at the additional polling place established under this section if the voter executes an affidavit stating that the voter:

(1) is unable to find the polling place in the voter's precinct; and

(2) has not previously voted in the election.

(c) The secretary of state shall adopt rules as necessary to implement this section.

Amendment No. 14 failed of adoption by (Record 867): 43 Yeas, 100 Nays, 1 Present, not voting.

Yeas — Allen; Alonzo; Alvarado; Anchia; Burnam; Davis, Y.; Deshotel; Dukes; Dutton; Farias; Farrar; Gallego; Giddings; Gonzales, V.; Gonzalez; Guillen; Gutierrez; Hernandez Luna; Hochberg; Howard, D.; Johnson; King, T.; Lozano; Lucio; Mallory Caraway; Marquez; Martinez; Martinez Fischer; McClendon; Menendez; Miles; Muñoz; Naishtat; Oliveira; Quintanilla; Raymond; Reynolds; Rodriguez; Thompson; Turner; Veasey; Villarreal; Walle.

Nays — Aliseda; Anderson, C.; Anderson, R.; Aycock; Beck; Berman; Bohac; Bonnen(C); Branch; Brown; Burkett; Button; Cain; Callegari; Carter; Chisum; Christian; Cook; Craddick; Creighton; Crownover; Darby; Davis, J.; Davis, S.; Driver; Eiland; Eissler; Elkins; Fletcher; Flynn; Frullo; Garza; Geren; Gonzales, L.; Hamilton; Hancock; Hardcastle; Harless; Harper-Brown; Hartnett; Hilderbran; Hopson; Howard, C.; Huberty; Hughes; Hunter; Isaac; Jackson; Keffer; King, P.; King, S.; Kleinschmidt; Kolkhorst; Kuempel; Landtroop; Larson; Laubenberg; Lavender; Legler; Lewis; Lyne; Madden; Margo; Miller, D.; Miller, S.; Morrison; Murphy; Nash; Orr; Otto; Parker; Patrick; Paxton; Peña; Perry; Phillips; Pitts; Price; Riddle; Ritter; Schwertner; Scott; Sheets; Sheffield; Shelton; Simpson; Smith, T.; Smith, W.; Smithee; Solomons; Taylor, L.; Taylor, V.; Torres; Truitt; Weber; White; Woolley; Workman; Zedler; Zerwas.

Present, not voting — Mr. Speaker.

Absent, Excused — Coleman.

Absent — Castro; Gooden; Pickett; Strama; Vo.

STATEMENT OF VOTE

When Record No. 867 was taken, I was in the house but away from my desk. I would have voted no.

Gooden

Amendment No. 15

Representative Phillips offered the following amendment to **HB 2817**:

Amend **HB 2817** (house committee printing) by adding the following appropriately numbered SECTION to the bill and renumbering subsequent SECTIONS of the bill accordingly:

SECTION _____. Subchapter A, Chapter 122, Election Code, is amended by adding Section 122.006 to read as follows:

Sec. 122.006. EXEMPTION FROM USE OF VOTING SYSTEM FOR CERTAIN POLITICAL SUBDIVISIONS. (a) This section applies only to:

- (1) a city with a population of 40,000 or less; and
- (2) a school district with a student population of 10,000 or less.
- (b) A political subdivision is not required to use an electronic voting system.

Amendment No. 15 was adopted.

Amendment No. 16

Representative Aycock offered the following amendment to **HB 2817**:

Amend **HB 2817** (house committee report) by adding the following appropriately numbered SECTIONS to the bill and renumbering the remaining SECTIONS of the bill accordingly:

SECTION _____. Sections 174.022(a), (b), and (c), Election Code, are amended to read as follows:

(a) The precinct conventions may ~~shall~~ be held in the regular county election precincts on:

- (1) general primary election day; and
- (2) a date determined by the county executive committee that occurs not later than the fifth day after the date of the general primary election [in the regular county election precincts].

(b) Consistent with Subsection (c), not ~~[Not]~~ later than the date of the regular drawing for position on the general primary election ballot, the county executive committee shall set the hour and place for convening each precinct convention for the precincts served by the committee. If the county executive committee fails to do so, the county chair shall set, consistent with Subsection (c), the hour and place.

(c) If precinct conventions are held on general primary election day, the ~~[The]~~ hour set for convening the conventions may not be earlier than 7 p.m. or later than 9 p.m., but a ~~[Notwithstanding the hour set for convening, the]~~ convention may not convene until the last voter has voted at the precinct polling place. If precinct conventions are held on a day other than general primary election day, the county executive committee shall set the hour for convening or a time frame in which the conventions must convene.

SECTION _____. Section 174.023, Election Code, is amended to read as follows:

Sec. 174.023. NOTICE OF DATE, HOUR, AND PLACE. (a) The county chair shall post a notice of the date, hour, and place for convening each precinct convention on the bulletin board used for posting notice of meetings of the commissioners court. The notice must remain posted continuously for the 10 days immediately preceding the date of the convention.

(b) Not later than the 10th day before the date of the precinct conventions, the county chair shall deliver to the county clerk written notice of the date, hour, and place for convening each precinct convention.

(c) If the county chair fails to post or deliver notice in accordance with this section, another member of the county executive committee may post or deliver the notice.

Amendment No. 16 was adopted.

Amendment No. 17

Representative Peña offered the following amendment to **HB 2817**:

Amend **HB 2817** by adding the following appropriately numbered SECTIONS and renumbering the existing SECTIONS as appropriate:

SECTION _____. Section 64.032, Election Code, is amended by adding Subsection (c-1) and amending Subsection (d) to read as follows:

(c-1) The person selected under Subsection (c) must also be a registered voter of the county in which the election is being held unless the person is related to the voter within the second degree by consanguinity or affinity, as determined under Subchapter B, Chapter 573, Government Code.

(d) If assistance is provided by a person of the voter's choice, the person shall provide a photo identification to an election officer and the officer shall enter the person's name and address on the poll list beside the voter's name.

SECTION _____. Subchapter B, Chapter 64, Election Code, is amended by adding Section 64.0325 to read as follows:

Sec. 64.0325. LIMITATION ON ASSISTANCE. (a) A person chosen under Section 64.032(c) may not assist more than two voters in a day, including assistance provided during the period for early voting by personal appearance and assistance provided under Section 86.010.

(b) A person who violates Subsection (a) is liable to the state for a civil penalty not to exceed \$10,000. The attorney general or the appropriate district or county attorney may bring suit to recover a penalty under this subsection.

(c) Subsection (a) does not apply to a person assisting a voter if the person:

(1) is an employee of a state-licensed care facility in which the voter resides and is providing assistance to the voter in the normal course of the employee's authorized duties;

(2) is a sign language interpreter providing interpretation services to the voter; or

(3) is related to the voter within the second degree by consanguinity or affinity, as determined under Subchapter B, Chapter 573, Government Code.

AMENDMENT NO. 17 - STATEMENT OF LEGISLATIVE INTENT

REPRESENTATIVE VEASEY: Representative Peña, obviously the issue of assisting voters and what not has become controversial. But, I wanted to ask you—let's say someone at the First Baptist Church wanted to help some of the elderly people, some of the golden angels, or some of the senior citizens in the church. They go and vote with that person and they wanted to help. Let's say there were six people that needed some help at the end of one of the senior meetings. Would that person be held criminally liable for assisting those voters in their church?

REPRESENTATIVE PEÑA: This is a civil penalty, and if they're family members, no. If these people come from a registered nursing home, no. If they are disabled, no. However, if they are not related in the sense that I've described, then yes, it is prohibited, but it'd be a civil penalty.

VEASEY: So civilly—let's say it could be somebody who is a volunteer at a senior citizen center. Not necessarily a nursing home, but a senior citizen center, or someone at church. If there was someone who was a volunteer at the First Baptist Church, or another church, you're saying that they would be held civilly liable for just assisting their church members help fill out—help them maybe to be able to see, to be able to understand what the layout of a ballot is like? Obviously, the person who has that ballot—once you have that ballot, wherever you are, whether it's your living room or it's your church, whether it's your synagogue or your living room, that place becomes your personal polling place. You're allowed to ask for assistance. Now you're saying that someone who is a good samaritan, who wants to help different individuals in their church, or the senior citizens home—they will no longer be allowed to do that, or they could be penalized?

PEÑA: Well, we have a lot of those good samaritans in the Valley. I think there were 8,000 in one election, and it is something highly frowned upon because people are actually carrying people to vote, who are college educated, telling people how to vote, and the political bosses in South Texas are determining whether they or their family members get jobs based on whether or not they accept the acceptance that they prescribed.

VEASEY: Well, I understand what you're saying, but not every place is the Valley. Is your bill bracketed just for the Valley?

PEÑA: No. Listen, if these are your family members or they are in a nursing home and this is a registered place, they're exempted. Those sort of exemptions were requested.

VEASEY: Well, if the budget passes, we're going to have a lot of people that won't be able to afford to be in a nursing home, and they may be sick and shut-in—

PEÑA: Well listen, I voted against that budget as well, so I understand. This is a real problem where we live and it's a growing problem in Dallas and other places—

VEASEY: Why don't you do an amendment to the amendment to bracket your bill?

PEÑA: I'm very happy with this being applied to Texas, because it is a problem that is deforming politics, certainly in my community, but in other communities, and is encouraging the corruption of the political process.

VEASEY: Now, Representative Taylor has said that he would accept amendments that were passed out of the committee. Was your bill passed out of the committee?

PEÑA: That's a fair enough argument, Mr. Veasey. It was heard in committee, but I cannot tell you that it was passed. So, fair enough, but I'll leave it to the house to decide. This is a real problem. For those of you members who are concerned about voter integrity, we had 8,000 people come out and vote for a write-in candidate ballot down in South Texas—it was a corruption of the system. It went to court, and a judge, a district court judge, demanded that the legislature get involved. It is an abuse of the poor, and an abuse of the elderly in elderly daycare centers. And, I'm concerned about our family members. I'm concerned about disabilities, and so we've made exceptions. There is an absolute corruption of the political process, and people need to stand up for it, and they need to stand up for it now. If it doesn't happen this session, I dare say it won't happen again.

REPRESENTATIVE GUTIERREZ: Colleague, are you talking about A. C. Cuellar; is that the election you're talking about, the write-in candidate?

PEÑA: Listen, all I know is that our district court judge was really offended and demanded that this legislature be involved—

GUTIERREZ: Is that the election you are talking about, colleague? The write-in candidate for Acequias for county commissioner, is that the election you're talking about?

PEÑA: I can't recall.

GUTIERREZ: Well, which is it? We want to know. You seem to have an idea of who it is. I want to know which candidate it was, because—

PEÑA: I answered your question, do you have another?

GUTIERREZ: Well, I do have another question, as a matter of fact. Do you know the people in the city of Weslaco and the people of Hidalgo County demanded that A. C. Cuellar be—he had so much support, he was able to get that kind of support in his community. There was no indication of any kind there was any kind of wrongdoing. Do you have any evidence of wrongdoing in that election, colleague?

PEÑA: Let me answer, if you would allow me. This went to the secretary of state, it went to the attorney general, and it went to the Texas Supreme Court. And everyone said, there is a problem in what's going on here, and it is a corruption of our process. And you, sir, ought to appreciate the corruption of the process to the poor and the people in elderly daycare centers.

GUTIERREZ: I know the people are voting rightly in the Valley, they are voting rightly in southern Bexar County, I know that people are—have access. I know that my district attorney has found no voter ID fraud of any kind. That's what I know. Legitimate investigations by my district attorney, legitimate investigations by the attorney general. I'm sorry, but you're committing a fraud on this body by going out and perpetuating an idea that A. C. Cuellar did not have a legitimate race down there in the Valley. I find it completely wrong that you don't even want to admit who that election is about.

PEÑA: Well let me say, Mr. Guerro was not the democrat, the democrats elected somebody. This was a write-in candidate that was pushed by the political machines of South Texas, and he appropriately lost.

GUTIERREZ: Colleague, I will have you know that my district attorney and the attorney general have investigated voter fraud and they have found nothing.

PEÑA: Well, the Supreme Court of Texas disagrees. Thank you very much, move passage.

REPRESENTATIVE TURNER: I just want to focus on one part and I was quickly reading it. There's a part in the amendment that says—I guess the election person, or if I go in, or somebody goes into the system, they can only have two people a day. What is that about?

PEÑA: Listen, if it is a family member, you're free to assist your entire family. If it is an adult daycare center, you are free to assist if you are a member of that center. If you are a disabled person, the rule doesn't apply to you. These are exemptions requested in committee and so I've asked for them. But, we have a particularly growing problem used by people with money—not necessarily all democrats—to buy elections.

TURNER: Right, and I got that. I'm just focusing on that helping two people per day, that's what I'm trying to—it doesn't just apply to your area, it would apply across the board, correct?

PEÑA: That's correct.

TURNER: I'm trying to understand the logistics, by helping only two persons a day. Help me understand that piece.

PEÑA: Well, there's a process in South Texas where you go out and pay people who have a cadre of votes that they bring in, and they go and they say, "I want to assist you with your vote," and they say, "No, thank you, I can do it myself," or "I have my son." "No, I'm telling you, I want to assist you to vote." And if they refuse to vote, well their family and other family members do not get jobs. That is what happens. And, if you do consent to vote, they then tell you how to vote.

TURNER: Let's say there is a person, and they are assisting a person to vote. Do they have to show identification? I'm just trying to understand the amendment.

PEÑA: Yes, the person assisting has to be—a voter has to show identification.

TURNER: And show identification to whom?

PEÑA: To the people in charge of the election process there.

TURNER: Okay. Is all of this, Representative Peña, aimed at a particular problem?

PEÑA: It is a growing problem. There was testimony out of Dallas, Texas. It is a South Texas problem, but it is growing statewide, and Sylvester, it is a corruption of the good people where I live. It is an absolute shame and corruption, and people should be standing up, and I wish your party would assist in it.

TURNER: I don't know about the areas that you speak. Hey, I do not know, but the amendment applies to all of us, all of our areas. Will you geographically restrict the amendment?

PEÑA: I tell you what, Sylvester, I'll be glad to accept an amendment to increase the size. If you have a big family, and you say, "Hey, I want my family of five," that's fine. We have to start somewhere, Sylvester. You know I wouldn't say this if I didn't firmly believe this, if I didn't see this with my own eyes. It is an absolute corruption of the process, and it creates elected officials that are, in themselves, corrupt. That is why, where I live, a good sizeable portion of the elected class has been indicted or thrown out of office. And we demand reform, and that's why I brought this amendment forward.

Amendment No. 17 - Point of Order

Representative Gutierrez raised a point of order against further consideration of Amendment No. 17 under Rule 11, Section 2 of the House Rules on the grounds that the amendment is not germane to the bill.

The chair overruled the point of order.

REMARKS ORDERED PRINTED

Representative Weber moved to print remarks on Amendment No. 17.

The motion prevailed.

Amendment No. 17 was adopted by (Record 868): 100 Yeas, 41 Nays, 3 Present, not voting.

Yeas — Aliseda; Anderson, C.; Anderson, R.; Aycock; Beck; Berman; Bohac; Bonnen(C); Branch; Brown; Button; Cain; Callegari; Carter; Chisum; Christian; Cook; Craddick; Creighton; Crownover; Darby; Davis, J.; Davis, S.; Driver; Eissler; Elkins; Fletcher; Flynn; Frullo; Garza; Geren; Gonzales, L.; Gooden; Hamilton; Hancock; Hardcastle; Harless; Harper-Brown; Hartnett; Hilderbran; Hopson; Howard, C.; Huberty; Hughes; Hunter; Isaac; Jackson; Keffer; King, P.; King, S.; Kleinschmidt; Kolkhorst; Kuempel; Landtroop; Larson; Laubenberg; Lavender; Legler; Lewis; Lyne; Madden; Margo; Miller, D.; Miller, S.; Morrison; Murphy; Nash; Orr; Otto; Parker; Patrick; Paxton; Peña; Perry; Phillips; Pickett; Pitts; Price; Riddle; Ritter; Schwertner; Scott; Sheets; Sheffield; Shelton; Simpson; Smith, T.; Smith, W.; Smithee; Solomons; Taylor, L.; Taylor, V.; Torres; Truitt; Weber; White; Woolley; Workman; Zedler; Zerwas.

Nays — Allen; Alonzo; Alvarado; Burnam; Castro; Davis, Y.; Deshotel; Dukes; Farias; Farrar; Gallego; Giddings; Gonzales, V.; Guillen; Gutierrez; Hernandez Luna; Hochberg; Howard, D.; Johnson; King, T.; Lozano; Lucio; Mallory Caraway; Marquez; Martinez; Martinez Fischer; McClendon; Menendez; Miles; Muñoz; Naishtat; Oliveira; Quintanilla; Raymond; Reynolds; Rodriguez; Thompson; Turner; Veasey; Vo; Walle.

Present, not voting — Mr. Speaker; Dutton; Gonzalez.

Absent, Excused — Coleman.

Absent — Anchia; Burkett; Eiland; Strama; Villarreal.

STATEMENT OF VOTE

When Record No. 868 was taken, my vote failed to register. I would have voted yes.

Burkett

Amendment No. 18

Representatives Branch, Villarreal, Burkett, Murphy, Hopson, Button, Laubenberg, Peña, D. Howard, Aliseda, R. Anderson, Carter, and Sheets offered the following amendment to **HB 2817**:

Amend **HB 2817** by adding the following appropriately numbered SECTIONS to the bill and renumbering the remaining SECTIONS of the bill accordingly:

SECTION _____. Section 62.011(c), Election Code, is amended to read as follows:

- (c) The poster must include instructions applicable to the election on:
 - (1) marking and depositing the ballot;
 - (2) voting for a write-in candidate;
 - (3) ~~[casting a straight party vote;~~
 - ~~[(4)] casting a provisional ballot;~~
 - ~~[(5)] until the expiration of Section 13.122(d), voting for the first time by a person who registered by mail;]~~ and
 - (4) [(6)] securing an additional ballot if the voter's original ballot is spoiled.

SECTION _____. Section 65.011, Election Code, is amended to read as follows:

Sec. 65.011. OVERVOTING. If ~~[Except as provided by Section 65.007(e) or (d), if]~~ a voter marks the ballot for more candidates for an office than the number of persons to be elected for that office, none of the votes may be counted for that office.

SECTION _____. Section 105.002(c), Election Code, is amended to read as follows:

- (c) The secretary of state shall prescribe the form of the ballot to allow a voter to cast a vote in each federal, state, or local race in the election. The ballot must allow a voter to write in the name of a candidate ~~[or, if applicable, cast a straight party vote].~~

- (1) direct the testing board to cast votes;
- (2) verify that each contest position on the ballot can be voted and is accurately counted for each precinct and ballot style;
- (3) include overvotes and undervotes for each race, if applicable to the system being tested;
- (4) [~~include straight party votes and crossover votes;~~
[~~(5)~~] include write-in votes, when applicable to the election;
- (5) [~~(6)~~] include provisional votes, if applicable to the system being tested;
- (6) [~~(7)~~] calculate the expected results from the test ballots;
- (7) [~~(8)~~] ensure that each voting machine has any public counter reset to zero and presented to the testing board for verification before testing;
- (8) [~~(9)~~] require that, for each feature of the system that allows disabled voters to cast a ballot, at least one vote be cast and verified by a two-person testing board team using that feature; and
- (9) [~~(10)~~] require that, when all votes are cast, the general custodian of election records and the testing board observe the tabulation of all ballots and compare the actual results to the expected results.

SECTION _____. Sections 1.005(20), 52.071, 64.004, 65.007, 122.001(b), 124.001, 124.003(d), 124.063(d), and 232.050(d), Election Code, are repealed.

Amendment No. 18 failed of adoption by (Record 869): 31 Yeas, 111 Nays, 1 Present, not voting.

Yeas — Aliseda; Anderson, R.; Berman; Branch; Burkett; Button; Carter; Cook; Davis, S.; Driver; Gonzalez; Hardcastle; Hartnett; Hopson; Howard, D.; Jackson; Kolkhorst; Larson; Laubenberg; Lavender; Margo; Menendez; Murphy; Peña; Pickett; Sheets; Shelton; Simpson; Taylor, V.; Villarreal; Workman.

Nays — Allen; Alonzo; Alvarado; Anchia; Anderson, C.; Aycock; Beck; Bohac; Bonnen(C); Brown; Burnam; Cain; Callegari; Castro; Chisum; Christian; Craddick; Creighton; Crownover; Darby; Davis, J.; Davis, Y.; Deshotel; Dutton; Eiland; Eissler; Elkins; Farias; Farrar; Fletcher; Flynn; Gallego; Garza; Geren; Giddings; Gonzales, L.; Gonzales, V.; Gooden; Guillen; Gutierrez; Hamilton; Hancock; Harless; Hernandez Luna; Hilderbran; Hochberg; Howard, C.; Huberty; Hughes; Hunter; Isaac; Johnson; Keffer; King, P.; King, S.; Kleinschmidt; Kuempel; Landtroop; Legler; Lewis; Lozano; Lucio; Lyne; Mallory Caraway; Marquez; Martinez; Martinez Fischer; Miles; Miller, D.; Miller, S.; Morrison; Muñoz; Naishtat; Nash; Oliveira; Orr; Otto; Parker; Patrick; Paxton; Perry; Phillips; Pitts; Price; Quintanilla; Raymond; Reynolds; Riddle; Ritter; Rodriguez; Schwertner; Scott; Sheffield; Smith, T.; Smith, W.; Smithee; Solomons; Strama; Taylor, L.; Thompson; Torres; Truitt; Turner; Veasey; Vo; Walle; Weber; White; Woolley; Zedler; Zerwas.

Present, not voting — Mr. Speaker.

Absent, Excused — Coleman.

Absent — Dukes; Frullo; Harper-Brown; King, T.; Madden; McClendon.

STATEMENTS OF VOTE

I was shown voting no on Record No. 869. I intended to vote yes.

Cain

When Record No. 869 was taken, I was in the house but away from my desk. I would have voted no.

Dukes

When Record No. 869 was taken, I was in the house but away from my desk. I would have voted yes.

Frullo

When Record No. 869 was taken, my vote failed to register. I would have voted no.

McClendon

Amendment No. 19

Representative Zedler offered the following amendment to **HB 2817**:

Amend **HB 2817** (house committee report) by adding the following appropriately numbered SECTIONS to the bill and renumbering the remaining SECTIONS of the bill accordingly:

SECTION _____. Section 32.075, Election Code, is amended by adding Subsections (f) and (g) to read as follows:

(f) The presiding judge or a special peace officer appointed under this section may not remove an alternate presiding judge from the polling place without cause or:

(1) the approval of the county clerk, county elections administrator, or similar official administering the election for a political subdivision; and

(2) the documentation and certification by the presiding judge of the reason for removal.

(g) A person is eligible for appointment as a special peace officer under Subsection (b) only if the person is licensed as a peace officer by the Commission on Law Enforcement Officer Standards and Education.

SECTION _____. Subchapter A, Chapter 33, Election Code, is amended by adding Section 33.008 to read as follows:

Sec. 33.008. CONFIDENTIAL INFORMATION. (a) During the administration of the election, any information provided by a watcher under this chapter that may be used to identify the watcher is confidential and may be used only for election administration purposes. The information may be made available to the public beginning on the day after election day.

(b) It is an offense to disclose information described by Subsection (a) during the administration of the election without the permission of the watcher.

(c) An offense under this section is a Class B misdemeanor.

Amendment No. 19 was adopted by (Record 870): 85 Yeas, 60 Nays, 2 Present, not voting.

Yeas — Aliseda; Anderson, C.; Anderson, R.; Beck; Berman; Bohac; Branch; Brown; Burkett; Button; Cain; Carter; Chisum; Christian; Cook; Craddick; Creighton; Crownover; Darby; Davis, S.; Driver; Eissler; Elkins; Fletcher; Flynn; Frullo; Garza; Gonzales, L.; Gooden; Hamilton; Hancock; Harless; Harper-Brown; Howard, C.; Huberty; Hughes; Hunter; Isaac; Jackson; Johnson; Keffer; King, P.; King, S.; Kleinschmidt; Kolkhorst; Kuempel; Landtroop; Larson; Laubenberg; Lavender; Legler; Lewis; Madden; Miller, S.; Morrison; Murphy; Nash; Orr; Otto; Parker; Patrick; Paxton; Peña; Perry; Phillips; Pitts; Price; Riddle; Schwertner; Sheets; Sheffield; Shelton; Simpson; Smith, W.; Smithee; Solomons; Taylor, L.; Taylor, V.; Torres; Truitt; White; Woolley; Workman; Zedler; Zerwas.

Nays — Allen; Alonzo; Alvarado; Anchia; Aycock; Burnam; Castro; Davis, J.; Davis, Y.; Deshotel; Dukes; Dutton; Eiland; Farias; Farrar; Gallego; Geren; Giddings; Gonzales, V.; Gonzalez; Guillen; Gutierrez; Hardcastle; Hartnett; Hernandez Luna; Hilderbran; Hochberg; Hopson; Howard, D.; King, T.; Lozano; Lucio; Lyne; Mallory Caraway; Margo; Marquez; Martinez; Martinez Fischer; McClendon; Menendez; Miles; Miller, D.; Muñoz; Naishtat; Oliveira; Pickett; Quintanilla; Raymond; Reynolds; Ritter; Rodriguez; Scott; Strama; Thompson; Turner; Veasey; Villarreal; Vo; Walle; Weber.

Present, not voting — Mr. Speaker; Bonnen(C).

Absent, Excused — Coleman.

Absent — Callegari; Smith, T.

STATEMENT OF VOTE

I was shown voting no on Record No. 870. I intended to vote yes.

Aycock

Amendment No. 20

Representative S. Davis offered the following amendment to **HB 2817**:

Amend **HB 2817** (house committee printing) by adding the following appropriately numbered SECTION to the bill and renumbering the remaining SECTIONS of the bill accordingly:

SECTION _____. (a) Section 15.022(a), Election Code, is amended to read as follows:

(a) The registrar shall make the appropriate corrections in the registration records, including, if necessary, deleting a voter's name from the suspense list:

(1) after receipt of a notice of a change in registration information under Section 15.021;

(2) after receipt of a voter's reply to a notice of investigation given under Section 16.033;

(3) after receipt of a copy of the poll [~~registration omissions~~] list and any affidavits executed under Section 63.006 [~~63.007~~], following an election;

(4) after receipt of a voter's statement of residence executed under Section 63.0011;

(5) before the effective date of the abolishment of a county election precinct or a change in its boundary;

(6) after receipt of United States Postal Service information indicating an address reclassification;

(7) after receipt of a voter's response under Section 15.053; or

(8) after receipt of a registration application or change of address under Chapter 20.

(b) Section 63.003(b), Election Code, is amended to read as follows:

(b) The poll list shall be maintained as an original and three ~~two~~ copies.

(c) Section 63.006, Election Code, is amended to read as follows:

Sec. 63.006. VOTER WITH REQUIRED DOCUMENTATION ~~[CORRECT CERTIFICATE]~~ WHO IS NOT ON LIST. (a) A voter who, when offering to vote, presents the documentation required under Section 63.001(b) [a voter registration certificate indicating that the voter is currently registered in the precinct in which the voter is offering to vote,] but whose name is not on the precinct list of registered voters~~[,]~~ shall be accepted for voting if the voter presents a voter registration certificate indicating that the voter is currently registered:

(1) in the precinct in which the voter is offering to vote; or

(2) in a different precinct in the same county as the precinct in which the voter is offering to vote and the voter executes an affidavit stating that the voter:

(A) is a resident of the precinct in which the voter is offering to vote or is otherwise entitled by law to vote in that precinct;

(B) was a resident of the precinct in which the voter is offering to vote at the time the information on the voter's residence address was last provided to the voter registrar;

(C) did not deliberately provide false information to secure registration in a precinct in which the voter does not reside; and

(D) is voting only once in the election.

(b) After the voter is accepted, an election officer shall:

(1) indicate beside the voter's name on the poll list that the voter was accepted under this section;

(2) enter beside the voter's name on the poll list the precinct of the voter's registration and the voter's registration number as indicated by the voter's registration certificate; and

(3) enter the voter's address beside the voter's name on the poll list.

(d) Section 63.009, Election Code, is amended to read as follows:

Sec. 63.009. VOTER WITHOUT CERTIFICATE WHO IS NOT ON LIST. A ~~[(a) Except as provided by Subsection (b), a]~~ voter who does not present a voter registration certificate when offering to vote, and whose name is not on the list of registered voters for the precinct in which the voter is offering to vote, shall be accepted for provisional voting if the voter executes an affidavit in accordance with Section 63.011.

~~[(b) If an election officer can determine from the voter registrar that the person is a registered voter of the county and the person presents proof of identification, the affidavits required by Sections 63.007 and 63.008 are substituted for the affidavit required by Section 63.011 in complying with that section. After the voter is accepted under this subsection, an election officer shall also indicate beside the voter's name on the poll list that the voter was accepted under this section.]~~

(e) Section 63.011, Election Code, is amended by amending Subsections (a) and (b) and adding Subsection (b-1) to read as follows:

(a) A person to whom Section 63.001(g) ~~[63.008(b)]~~ or 63.009 ~~[63.009(a)]~~ applies may cast a provisional ballot if the person executes an affidavit stating that the person:

(1) is a registered voter in the precinct in which the person seeks to vote; and

(2) is eligible to vote in the election.

(b) A form for an affidavit required by this section must ~~[shall]~~ be printed on an envelope in which the provisional ballot voted by the person may be placed and must include:

(1) a space for entering the identification number of the provisional ballot voted by the person; and

(2) a space for an election officer to indicate whether the person presented a form of identification described by Section 63.0101.

(b-1) The affidavit form may include space for disclosure of any necessary information to enable the person to register to vote under Chapter 13. The secretary of state shall prescribe the form of the affidavit under this section.

(f) Section 66.0241, Election Code, is amended to read as follows:

Sec. 66.0241. CONTENTS OF ENVELOPE NO. 4. Envelope no. 4 must contain:

(1) the precinct list of registered voters;

(2) the registration correction list;

(3) a copy of the poll list ~~[the registration omissions list];~~

(4) any statements of residence executed under Section 63.0011; and

(5) any affidavits executed under Section 63.006 ~~[63.007]~~ or 63.011.

(g) Section 85.031(b), Election Code, is amended to read as follows:

(b) On accepting a voter, the clerk shall indicate beside the voter's name on the list of registered voters ~~[or registration omissions list, as applicable,]~~ that the voter is accepted to vote by personal appearance unless the form of the ~~[either]~~ list makes it impracticable to do so, and the clerk shall enter the voter's name on the poll list.

(h) Sections 63.005, 63.007, and 63.008, Election Code, are repealed.

(i) Notwithstanding any other provision of this Act, this SECTION takes effect January 1, 2012.

Amendment No. 20 was adopted.

Amendment No. 21

Representative Gutierrez offered the following amendment to **HB 2817**:

Amend **HB 2817** (house committee printing) by adding the following appropriately numbered SECTION to the bill and renumbering the remaining SECTIONS of the bill accordingly:

SECTION _____. Notwithstanding any other law, a special election must be called for an office in which a person who was elected to the office changes political party membership.

Amendment No. 21 failed of adoption by (Record 871): 35 Yeas, 104 Nays, 4 Present, not voting.

Yeas — Allen; Alonzo; Alvarado; Anchia; Burnam; Castro; Davis, Y.; Dutton; Farias; Farrar; Gallego; Gonzales, V.; Gonzalez; Guillen; Gutierrez; Hernandez Luna; Hochberg; Howard, D.; Johnson; Lucio; Marquez; Martinez; Martinez Fischer; Menendez; Miles; Muñoz; Naishtat; Pickett; Quintanilla; Raymond; Reynolds; Strama; Veasey; Vo; Walle.

Nays — Aliseda; Anderson, C.; Anderson, R.; Aycock; Beck; Berman; Bohac; Bonnen(C); Branch; Brown; Burkett; Button; Cain; Callegari; Carter; Chisum; Christian; Cook; Craddick; Creighton; Crownover; Darby; Davis, J.; Davis, S.; Deshotel; Driver; Eiland; Eissler; Elkins; Fletcher; Flynn; Frullo; Garza; Geren; Gonzales, L.; Gooden; Hamilton; Hancock; Hardcastle; Harless; Harper-Brown; Hartnett; Hilderbran; Hopson; Howard, C.; Huberty; Hughes; Hunter; Isaac; Jackson; Keffer; King, P.; King, S.; King, T.; Kleinschmidt; Kolkhorst; Kuempel; Landtroop; Larson; Laubenberg; Lavender; Legler; Lewis; Lyne; Madden; Margo; Miller, D.; Miller, S.; Morrison; Murphy; Nash; Orr; Otto; Parker; Patrick; Paxton; Peña; Perry; Phillips; Pitts; Price; Riddle; Ritter; Schwertner; Scott; Sheets; Sheffield; Shelton; Simpson; Smith, T.; Smith, W.; Smithee; Solomons; Taylor, L.; Taylor, V.; Torres; Truitt; Villarreal; Weber; White; Woolley; Workman; Zedler; Zerwas.

Present, not voting — Mr. Speaker; Giddings; Mallory Caraway; Turner.

Absent, Excused — Coleman.

Absent — Dukes; Lozano; McClendon; Oliveira; Rodriguez; Thompson.

STATEMENTS OF VOTE

When Record No. 871 was taken, I was in the house but away from my desk. I would have voted yes.

Dukes

When Record No. 871 was taken, I was in the house but away from my desk. I would have voted yes.

McClendon

HB 2817, as amended, was passed to engrossment by (Record 872): 104 Yeas, 40 Nays, 1 Present, not voting.

Yeas — Aliseda; Anderson, C.; Anderson, R.; Aycock; Beck; Berman; Bohac; Bonnen(C); Branch; Brown; Burkett; Button; Cain; Callegari; Carter; Chisum; Christian; Cook; Craddick; Creighton; Crownover; Darby; Davis, J.; Davis, S.; Driver; Eiland; Eissler; Elkins; Fletcher; Flynn; Frullo; Gallego; Garza;

Geren; Gonzales, L.; Gooden; Hamilton; Hancock; Hardcastle; Harless; Harper-Brown; Hartnett; Hilderbran; Hochberg; Hopson; Howard, C.; Huberty; Hughes; Hunter; Isaac; Jackson; Keffer; King, P.; King, S.; King, T.; Kleinschmidt; Kolkhorst; Kuempel; Landtroop; Larson; Laubenberg; Lavender; Legler; Lewis; Lyne; Madden; Margo; Miller, D.; Miller, S.; Morrison; Murphy; Nash; Orr; Otto; Parker; Patrick; Paxton; Peña; Perry; Phillips; Pitts; Price; Riddle; Ritter; Schwertner; Scott; Sheets; Sheffield; Shelton; Simpson; Smith, T.; Smith, W.; Smithee; Solomons; Taylor, L.; Taylor, V.; Torres; Truitt; Weber; White; Woolley; Workman; Zedler; Zerwas.

Nays — Allen; Alonzo; Alvarado; Anchia; Burnam; Castro; Davis, Y.; Deshotel; Dutton; Farrar; Giddings; Gonzales, V.; Gonzalez; Guillen; Gutierrez; Hernandez Luna; Howard, D.; Johnson; Lozano; Lucio; Mallory Caraway; Marquez; Martinez; Martinez Fischer; Menendez; Miles; Muñoz; Naishtat; Oliveira; Pickett; Quintanilla; Raymond; Reynolds; Rodriguez; Strama; Thompson; Turner; Veasey; Villarreal; Vo.

Present, not voting — Mr. Speaker.

Absent, Excused — Coleman.

Absent — Dukes; Farias; McClendon; Walle.

STATEMENTS OF VOTE

When Record No. 872 was taken, I was in the house but away from my desk. I would have voted no.

Dukes

When Record No. 872 was taken, I was in the house but away from my desk. I would have voted no.

McClendon

COMMITTEE MEETING ANNOUNCEMENTS

The following committee meetings were announced:

Judiciary and Civil Jurisprudence meeting is cancelled.

Ways and Means meeting is cancelled.

State Affairs meeting is cancelled.

POSTPONED BUSINESS

The following bills were laid before the house as postponed business:

(Speaker in the chair)

CSHB 12 ON SECOND READING (by Solomons, Bohac, Harless, et al.)

CSHB 12, A bill to be entitled An Act relating to the enforcement of state and federal laws governing immigration by certain governmental entities.

CSHB 12 was read second time earlier today and was postponed until this time. Amendment No. 1 was pending at the time of postponement.

Amendment No. 1 was withdrawn.

Amendment No. 2

Representative Menendez offered the following amendment to **CSHB 12**:

Amend **CSHB 12** (house committee printing) by striking the enacting clause (page 1, line 4).

Amendment No. 2 failed of adoption by (Record 873): 46 Yeas, 100 Nays, 1 Present, not voting.

Yeas — Allen; Alonzo; Alvarado; Anchia; Burnam; Castro; Davis, Y.; Deshotel; Dukes; Dutton; Farias; Farrar; Gallego; Giddings; Gonzales, V.; Gonzalez; Guillen; Gutierrez; Hernandez Luna; Hochberg; Howard, D.; Johnson; King, T.; Lozano; Lucio; Mallory Caraway; Marquez; Martinez; Martinez Fischer; McClendon; Menendez; Muñoz; Naishtat; Oliveira; Pickett; Quintanilla; Raymond; Reynolds; Rodriguez; Strama; Thompson; Turner; Veasey; Villarreal; Vo; Walle.

Nays — Aliseda; Anderson, C.; Anderson, R.; Aycock; Beck; Berman; Bohac; Bonnen; Branch; Brown; Burkett; Button; Cain; Callegari; Carter; Chisum; Christian; Cook; Craddick; Creighton; Crownover; Darby; Davis, J.; Davis, S.; Driver; Eiland; Eissler; Elkins; Fletcher; Flynn; Frullo; Garza; Geren; Gonzales, L.; Gooden; Hamilton; Hancock; Hardcastle; Harless; Harper-Brown; Hartnett; Hilderbran; Hopson; Howard, C.; Huberty; Hughes; Hunter; Isaac; Jackson; Keffer; King, P.; King, S.; Kleinschmidt; Kolkhorst; Kuempel; Landtroop; Larson; Laubenberg; Lavender; Legler; Lewis; Lyne; Madden; Margo; Miller, D.; Miller, S.; Morrison; Murphy; Nash; Orr; Otto; Parker; Patrick; Paxton; Perry; Phillips; Pitts; Price; Riddle; Ritter; Schwertner; Scott; Sheets; Sheffield; Shelton; Simpson; Smith, T.; Smith, W.; Smithee; Solomons; Taylor, L.; Taylor, V.; Torres; Truitt; Weber; White; Woolley; Workman; Zedler; Zerwas.

Present, not voting — Mr. Speaker(C).

Absent, Excused — Coleman.

Absent — Miles; Peña.

STATEMENT OF VOTE

When Record No. 873 was taken, I was in the house but away from my desk. I would have voted yes.

Miles

Amendment No. 3

Representatives Solomons, Peña, Aliseda, and Torres offered the following amendment to **CSHB 12**:

Amend **CSHB 12** (house committee printing) as follows:

(1) On page 1, line 11, strike "Subsection (b)" and substitute "Subsections (b) and (b-1)".

(2) On page 1, between lines 22 and 23, add the following:

(b-1) This section does not apply to a hospital or hospital district created under Subtitle C or D, Title 4, Health and Safety Code, or a hospital district created under a general or special law authorized by Article IX, Texas Constitution, to the extent that the hospital or hospital district is providing access to or delivering medical or health care services as required under the following applicable federal or state laws:

- (1) 42 U.S.C. Section 1395dd;
- (2) 42 U.S.C. Section 1396b(v);
- (3) Subchapter C, Chapter 61, Health and Safety Code;
- (4) Chapter 81, Health and Safety Code; and
- (5) Section 311.022, Health and Safety Code.

(b-2) Subsection (b-1) does not exclude the application of this section to a commissioned peace officer employed by or commissioned by a hospital or hospital district subject to Subsection (b-1).

Amendment No. 3 was adopted.

Amendment No. 4

Representatives Solomons, Anchia, V. Gonzales, Rodriguez, Martinez Fischer, Menendez, Reynolds, Aliseda, Guillen, Villarreal, Peña, Sheets, Veasey, Farrar, L. Gonzales, V. Taylor, Garza, Farias, Thompson, Dukes, Chisum, Isaac, Alvarado, Y. Davis, Scott, Kuempel, Perry, Marquez, Torres, Turner, Frullo, Otto, Lozano, Burkett, Keffer, Jackson, Castro, Lucio, Allen, Orr, Cook, T. King, Pitts, W. Smith, Dutton, Harper-Brown, Lewis, D. Howard, Driver, S. Davis, Eissler, Gonzalez, Gutierrez, Burnam, R. Anderson, Button, Parker, Paxton, Gallego, L. Taylor, Hilderbran, Kleinschmidt, Kolkhorst, Alonzo, D. Miller, Shelton, Johnson, Lavender, Madden, Schwertner, Workman, Vo, Fletcher, and Miles offered the following amendment to **CSHB 12**:

Amend **CSHB 12** on page 2, after line 27, by adding a new Subsection (d-1) to read as follows:

(d-1) An entity described by Subsection (a) or a person employed by or otherwise under the direction or control of the entity may not consider race, color, language, or national origin while enforcing the laws described by Subsection (c) except to the extent permitted by the United States Constitution or the Texas Constitution.

Amendment No. 4 was adopted.

Amendment No. 5

Representatives Solomons, Hochberg, Huberty, Eissler, and Hancock offered the following amendment to **CSHB 12**:

Amend **CSHB 12** on page 1, line 22, after the period by inserting the following:

This section does not apply to the release of information contained in education records of an educational agency or institution, except in conformity with the Family Educational Rights and Privacy Acts of 1974, Sec. 513, Pub. L. No. 93-380, 20 U.S.C. Sec. 1232g.

Amendment No. 6

Representatives Oliveira and Huberty offered the following amendment to Amendment No. 5:

Amend the Oliveira amendment to **CSHB 12** (Floor Amendment No. __) by striking the text of the amendment and substituting the following:

Amend **CSHB 12** (house committee printing) as follows:

(1) On page 1, line 21, strike "a school district or open-enrollment charter school or".

(2) On page 1, line 22, after the period insert the following:

This section does not apply to the release of information contained in education records of an educational agency or institution, except in conformity with the Family Educational Rights and Privacy Acts of 1974, Sec. 513, Pub. L. No. 93-380, 20 U.S.C. Sec. 1232g.

Amendment No. 6 was withdrawn.

Amendment No. 5 was adopted.

Amendment No. 7

Representatives Solomons and Gutierrez offered the following amendment to **CSHB 12**:

Amend **CSHB 12** (house committee printing) by adding the following appropriately numbered SECTION to the bill and renumbering the subsequent SECTIONS of the bill accordingly:

SECTION _____. Subchapter A, Chapter 411, Government Code, is amended by adding Section 411.0208 to read as follows:

Sec. 411.0208. POLICY REGARDING ENFORCEMENT OF STATE AND FEDERAL IMMIGRATION LAWS. Notwithstanding Section 370.0031(a), Local Government Code, the department is subject to Section 370.0031, Local Government Code.

Amendment No. 7 was withdrawn.

Amendment No. 8

Representatives Huberty and Oliveira offered the following amendment to **CSHB 12**:

Amend **CSHB 12** on page 1, line 21, by striking "a school district or open-enrollment charter school or".

Representative Solomons moved to table Amendment No. 8.

The motion to table prevailed by (Record 874): 80 Yeas, 65 Nays, 1 Present, not voting.

Yeas — Anderson, C.; Anderson, R.; Beck; Berman; Bonnen; Branch; Burkett; Button; Callegari; Carter; Chisum; Christian; Cook; Creighton; Crownover; Davis, J.; Davis, S.; Driver; Eissler; Elkins; Fletcher; Frullo; Garza; Geren; Gooden; Hancock; Hardcastle; Harless; Harper-Brown; Hilderbran; Hopson; Howard, C.; Hughes; Hunter; Isaac; Jackson; Keffer; King, P.; King, S.;

Kleinschmidt; Kolkhorst; Kuempel; Landtroop; Larson; Laubenberg; Lavender; Legler; Lewis; Lyne; Madden; Margo; Miller, D.; Miller, S.; Morrison; Murphy; Nash; Orr; Otto; Parker; Paxton; Perry; Phillips; Price; Riddle; Ritter; Schwertner; Scott; Sheets; Sheffield; Shelton; Simpson; Smith, W.; Smithee; Solomons; Taylor, L.; Torres; Truitt; White; Woolley; Zedler.

Nays — Aliseda; Allen; Alonzo; Alvarado; Anchia; Aycock; Brown; Burnam; Cain; Castro; Craddick; Darby; Davis, Y.; Deshotel; Dukes; Dutton; Eiland; Farias; Farrar; Gallego; Giddings; Gonzales, L.; Gonzales, V.; Gonzalez; Guillen; Gutierrez; Hamilton; Hartnett; Hernandez Luna; Hochberg; Howard, D.; Huberty; Johnson; King, T.; Lozano; Lucio; Mallory Caraway; Marquez; Martinez; Martinez Fischer; McClendon; Menendez; Miles; Muñoz; Naishtat; Oliveira; Patrick; Peña; Pickett; Pitts; Raymond; Reynolds; Rodriguez; Smith, T.; Strama; Taylor, V.; Thompson; Turner; Veasey; Villarreal; Vo; Walle; Weber; Workman; Zerwas.

Present, not voting — Mr. Speaker(C).

Absent, Excused — Coleman.

Absent — Bohac; Flynn; Quintanilla.

STATEMENTS OF VOTE

When Record No. 874 was taken, my vote failed to register. I would have voted yes.

Bohac

I was shown voting yes on Record No. 874. I intended to vote no.

Branch

I was shown voting yes on Record No. 874. I intended to vote no.

Callegari

I was shown voting yes on Record No. 874. I intended to vote no.

Eissler

CSHB 12 - MOTION FOR PREVIOUS QUESTION

Representative Solomons moved the previous question on passage to engrossment of **CSHB 12**, as amended.

The motion was seconded by Representatives Burkett, Scott, L. Gonzales, Torres, Orr, Otto, Chisum, Keffer, Christian, Eissler, Huberty, Pitts, Gooden, Lewis, V. Taylor, S. King, Phillips, Flynn, Parker, Button, Cain, White, Zedler, Morrison, L. Taylor, Aycock, Shelton, D. Miller, S. Miller, Frullo, Darby, P. King, Harper-Brown, Crownover, Hughes, Isaac, Simpson, Lyne, Aliseda, Landtroop, Driver, Beck, Cook, Lavender, Hardcastle, Jackson, R. Anderson, Hunter, S. Davis, Sheets, Elkins, J. Davis, Hancock, Harless, Truitt, Berman, Ritter, Bonnen, Paxton, Smithee, Laubenberg, Hilderbran, Legler, Schwertner, Price, Margo, Workman, Nash, Zerwas, C. Howard, Craddick, W. Smith,

Murphy, Kuempel, Carter, Hardcastle, Kolkhorst, Branch, Larson, Geren, Weber, Hartnett, Sheffield, Kleinschmidt, C. Anderson, Creighton, Fletcher, Brown, Solomons, Madden, Riddle, Patrick, T. Smith, Woolley, and Peña.

The motion for the previous question prevailed by (Record 875): 99 Yeas, 47 Nays, 1 Present, not voting.

Yeas — Aliseda; Anderson, C.; Anderson, R.; Aycock; Beck; Berman; Bohac; Bonnen; Branch; Brown; Burkett; Button; Cain; Callegari; Carter; Chisum; Christian; Cook; Craddick; Creighton; Crownover; Darby; Davis, J.; Davis, S.; Driver; Eissler; Elkins; Fletcher; Flynn; Frullo; Garza; Geren; Gonzales, L.; Gooden; Hamilton; Hancock; Hardcastle; Harless; Harper-Brown; Hartnett; Hilderbran; Hopson; Howard, C.; Huberty; Hughes; Hunter; Isaac; Jackson; Keffer; King, P.; King, S.; Kleinschmidt; Kolkhorst; Kuempel; Landtroop; Larson; Laubenberg; Lavender; Legler; Lewis; Lyne; Madden; Margo; Miller, D.; Miller, S.; Morrison; Murphy; Nash; Orr; Otto; Parker; Patrick; Paxton; Peña; Perry; Phillips; Pitts; Price; Riddle; Ritter; Schwertner; Scott; Sheets; Sheffield; Shelton; Simpson; Smith, T.; Smith, W.; Smithee; Solomons; Taylor, L.; Torres; Truitt; Weber; White; Woolley; Workman; Zedler; Zerwas.

Nays — Allen; Alonzo; Alvarado; Anchia; Burnam; Castro; Davis, Y.; Deshotel; Dukes; Eiland; Farias; Farrar; Gallego; Giddings; Gonzales, V.; Gonzalez; Guillen; Gutierrez; Hernandez Luna; Hochberg; Howard, D.; Johnson; King, T.; Lozano; Lucio; Mallory Caraway; Marquez; Martinez; Martinez Fischer; McClendon; Menendez; Miles; Muñoz; Naishtat; Oliveira; Pickett; Quintanilla; Raymond; Reynolds; Rodriguez; Strama; Thompson; Turner; Veasey; Villarreal; Vo; Walle.

Present, not voting — Mr. Speaker(C).

Absent, Excused — Coleman.

Absent — Dutton; Taylor, V.

STATEMENT OF VOTE

When Record No. 875 was taken, my vote failed to register. I would have voted yes.

V. Taylor

CSHB 12, as amended, was passed to engrossment by (Record 876): 100 Yeas, 47 Nays, 1 Present, not voting.

Yeas — Aliseda; Anderson, C.; Anderson, R.; Aycock; Beck; Berman; Bohac; Bonnen; Branch; Brown; Burkett; Button; Cain; Callegari; Carter; Chisum; Christian; Cook; Craddick; Creighton; Crownover; Darby; Davis, J.; Davis, S.; Driver; Eissler; Elkins; Fletcher; Flynn; Frullo; Garza; Geren; Gonzales, L.; Gooden; Hamilton; Hancock; Hardcastle; Harless; Harper-Brown; Hartnett; Hilderbran; Hopson; Howard, C.; Huberty; Hughes; Hunter; Isaac; Jackson; Keffer; King, P.; King, S.; Kleinschmidt; Kolkhorst; Kuempel; Landtroop; Larson; Laubenberg; Lavender; Legler; Lewis; Lyne; Madden;

Margo; Miller, D.; Miller, S.; Morrison; Murphy; Nash; Orr; Otto; Parker; Patrick; Paxton; Peña; Perry; Phillips; Pitts; Price; Riddle; Ritter; Schwertner; Scott; Sheets; Sheffield; Shelton; Simpson; Smith, T.; Smith, W.; Smithee; Solomons; Taylor, L.; Taylor, V.; Torres; Truitt; Weber; White; Woolley; Workman; Zedler; Zerwas.

Nays — Allen; Alonzo; Alvarado; Anchia; Burnam; Castro; Davis, Y.; Deshotel; Dukes; Eiland; Farias; Farrar; Gallego; Giddings; Gonzales, V.; Gonzalez; Guillen; Gutierrez; Hernandez Luna; Hochberg; Howard, D.; Johnson; King, T.; Lozano; Lucio; Mallory Caraway; Marquez; Martinez; Martinez Fischer; McClendon; Menendez; Miles; Muñoz; Naishtat; Oliveira; Pickett; Quintanilla; Raymond; Reynolds; Rodriguez; Strama; Thompson; Turner; Veasey; Villarreal; Vo; Walle.

Present, not voting — Mr. Speaker(C).

Absent, Excused — Coleman.

Absent — Dutton.

HR 1671 - ADOPTED
(by Gallego)

Representative Gallego moved to suspend all necessary rules to take up and consider at this time **HR 1671**.

The motion prevailed.

The following resolution was laid before the house:

HR 1671, Commending Roberto "Bobby" Barrera of Del Rio, chair of the Disabled American Veterans.

HR 1671 was adopted.

On motion of Representative Gallego, the names of all the members of the house were added to **HR 1671** as signers thereof.

COMMITTEE GRANTED PERMISSION TO MEET

Representative Hunter requested permission for the Committee on Calendars to meet while the house is in session, at 11:55 p.m. today, in 3W.15, to set a calendar.

Permission to meet was granted.

COMMITTEE MEETING ANNOUNCEMENT

The following committee meeting was announced:

Calendars, 11:55 p.m. today, 3W.15, for a formal meeting, to set a calendar.

POSTPONED BUSINESS

The following bills were laid before the house as postponed business:

SB 1478 ON SECOND READING
(Crownover - House Sponsor)

SB 1478, A bill to be entitled An Act relating to deadlines for the Railroad Commission of Texas to review certain applications for surface coal mining operation permits.

SB 1478 was considered in lieu of **CSHB 2963**.

SB 1478 was read second time and was passed to third reading.

CSHB 2963 - LAID ON THE TABLE SUBJECT TO CALL

Representative Crownover moved to lay **CSHB 2963** on the table subject to call.

The motion prevailed.

CSHB 400 ON SECOND READING
(by Eissler, Aycock, Crownover, C. Anderson, Garza, et al.)

CSHB 400, A bill to be entitled An Act relating to flexibility for public schools to administer primary and secondary education efficiently.

CSHB 400 was read second time earlier today and was postponed until this time.

CSHB 400 - POINT OF ORDER

Representative Y. Davis raised a point of order against further consideration of **CSHB 400** under Rule 6, Section 16 of the House Rules.

The point of order was withdrawn.

Representative Eissler moved to postpone consideration of **CSHB 400** until 9:30 a.m. tomorrow.

The motion prevailed.

BILLS AND RESOLUTIONS SIGNED BY THE SPEAKER

Notice was given at this time that the speaker had signed bills and resolutions in the presence of the house (see the addendum to the daily journal, Signed by the Speaker, House List No. 25).

COMMITTEE MEETING ANNOUNCEMENT

The following committee meeting was announced:

Elections meeting is cancelled.

PROVIDING FOR ADJOURNMENT

Representative Hopson moved that, at the conclusion of the reading of bills and resolutions on first reading and referral to committees, the house adjourn until 9:30 a.m. today, May 10, in memory of Dixie Lincoln of Arkansas.

The motion prevailed.

**BILLS AND JOINT RESOLUTIONS ON FIRST READING
AND REFERRAL TO COMMITTEES
RESOLUTIONS REFERRED TO COMMITTEES**

Bills and joint resolutions were at this time laid before the house, read first time, and referred to committees. Resolutions were at this time laid before the house and referred to committees. (See the addendum to the daily journal, Referred to Committees, List No. 1.)

(V. Taylor in the chair)

ADJOURNMENT

In accordance with a previous motion, the house, at 12:14 a.m. May 10, adjourned until 9:30 a.m. today.

ADDENDUM

REFERRED TO COMMITTEES

The following bills and joint resolutions were today laid before the house, read first time, and referred to committees, and the following resolutions were today laid before the house and referred to committees. If indicated, the chair today corrected the referral of the following measures:

List No. 1

HB 3866 (By D. Miller), Relating to the date for the election of directors of the Hill Country Underground Water Conservation District.

To Natural Resources.

HCR 146 (By V. Gonzales), Urging Congress to enact legislation to provide sufficient manpower, infrastructure, and technology to ensure the security and efficiency of land ports of entry on the southwestern border.

To Border and Intergovernmental Affairs.

HCR 147 (By Button), Encouraging cities to promote long-term economic development and job growth by working together on the regional level to attract and retain business investment.

To Economic and Small Business Development.

HCR 149 (By S. Davis), Recognizing the King Street Patriots for their commitment to freedom and election integrity.

To Rules and Resolutions.

SB 32 to Higher Education.

SB 34 to Higher Education.

SB 66 to Public Education.

SB 105 to Energy Resources.

SB 546 to Public Health.

SB 570 to Public Education.
SB 682 to Ways and Means.
SB 812 to Pensions, Investments, and Financial Services.
SB 905 to Criminal Jurisprudence.
SB 954 to County Affairs.
SB 955 to County Affairs.
SB 956 to Natural Resources.
SB 1032 to Agriculture and Livestock.
SB 1057 to Transportation.
SB 1113 to Public Education.
SB 1120 to Ways and Means.
SB 1198 to Judiciary and Civil Jurisprudence.
SB 1209 to Corrections.
SB 1214 to Public Education.
SB 1234 to Urban Affairs.
SB 1286 to Pensions, Investments, and Financial Services.
SB 1334 to Licensing and Administrative Procedures.
SB 1386 to Transportation.
SB 1417 to Judiciary and Civil Jurisprudence.
SB 1422 to Transportation.
SB 1438 to Public Health.
SB 1471 to Environmental Regulation.
SB 1529 to Homeland Security and Public Safety.
SB 1532 to Homeland Security and Public Safety.
SB 1533 to Public Education.
SB 1543 to Public Education.
SB 1579 to Appropriations.
SB 1583 to Appropriations.
SB 1584 to Appropriations.
SB 1636 to Homeland Security and Public Safety.
SB 1727 to Higher Education.
SB 1729 to Higher Education.
SB 1731 to Higher Education.
SB 1737 to Defense and Veterans' Affairs.
SB 1742 to Transportation.
SB 1743 to State Affairs.
SB 1751 to Judiciary and Civil Jurisprudence.
SB 1760 to Land and Resource Management.
SB 1789 to Land and Resource Management.

SB 1806 to Insurance.

SB 1816 to Land and Resource Management.

SB 1849 to State Affairs.

SB 1875 to Natural Resources.

SB 1877 to Natural Resources.

SB 1878 to Human Services.

SB 1882 to Urban Affairs.

SB 1895 to Natural Resources.

SB 1905 to Culture, Recreation, and Tourism.

SB 1909 to Higher Education.

SB 1910 to State Affairs.

SCR 35 to Culture, Recreation, and Tourism.

SCR 39 to Culture, Recreation, and Tourism.

SCR 54 to Rules and Resolutions.

SIGNED BY THE SPEAKER

The following bills and resolutions were today signed in the presence of the house by the speaker:

House List No. 24

HB 15, HB 46, HB 906, HB 984, HB 1032, HB 1346, HB 1625, HB 2561, HCR 45

House List No. 25

HB 74

Senate List No. 24

SB 18, SB 265, SB 378, SB 528, SB 653, SB 820, SB 877, SB 918, SB 1195, SB 1272, SB 1303, SB 1490, SB 1568, SB 1716, SJR 4

MESSAGES FROM THE SENATE

The following messages from the senate were today received by the house:

Message No. 1

MESSAGE FROM THE SENATE

SENATE CHAMBER

Austin, Texas

Monday, May 9, 2011

The Honorable Speaker of the House
House Chamber
Austin, Texas

Mr. Speaker:

I am directed by the senate to inform the house that the senate has taken the following action:

THE SENATE HAS PASSED THE FOLLOWING MEASURES:

HB 571 Huberty SPONSOR: Williams
Relating to the regulation of certain aggregate production operations by the Texas Commission on Environmental Quality; providing penalties.

HB 610 Zerwas SPONSOR: Seliger
Relating to certain notices sent by the Texas Commission on Environmental Quality.

HB 1806 Flynn SPONSOR: Hegar
Relating to fishing tournament fraud; providing penalties.

HB 1832 Ritter SPONSOR: Williams
Relating to the law governing the Lower Neches Valley Authority; providing authority to issue bonds.

HB 2785 Davis, John SPONSOR: Shapiro
Relating to the creation of the Select Committee on Economic Development.

HCR 116 Davis, John SPONSOR: Harris
In memory of the Reverend Clinton Roderick Dobson of Arlington.

HCR 139 Beck SPONSOR: Ellis
In memory of former Texas secretary of state Myra McDaniel.

THE SENATE HAS CONCURRED IN THE HOUSE AMENDMENTS TO THE FOLLOWING MEASURES:

SB 501 (31 Yeas, 0 Nays)

SB 893 (31 Yeas, 0 Nays)

SB 980 (31 Yeas, 0 Nays)

THE SENATE HAS REFUSED TO CONCUR IN THE HOUSE AMENDMENTS TO THE FOLLOWING MEASURES AND REQUESTS THE APPOINTMENT OF A CONFERENCE COMMITTEE TO ADJUST THE DIFFERENCES BETWEEN THE TWO HOUSES:

SB 201
Senate Conferees: Uresti - Chair/Birdwell/Hinojosa/Wentworth/Williams

THE SENATE HAS GRANTED THE REQUEST OF THE HOUSE FOR THE APPOINTMENT OF A CONFERENCE COMMITTEE ON THE FOLLOWING MEASURES:

HB 1555
Senate Conferees: Ellis - Chair/Huffman/Patrick/Shapiro/Whitmire

THE SENATE HAS ADOPTED THE FOLLOWING CONFERENCE COMMITTEE REPORTS:

SB 14 (19 Yeas, 12 Nays)

Respectfully,
Patsy Spaw
Secretary of the Senate

Message No. 2

MESSAGE FROM THE SENATE
SENATE CHAMBER
Austin, Texas
Monday, May 9, 2011 - 2

The Honorable Speaker of the House
House Chamber
Austin, Texas

Mr. Speaker:

I am directed by the senate to inform the house that the senate has taken the following action:

THE SENATE HAS PASSED THE FOLLOWING MEASURES:

SB 303 Nichols
Relating to health care services provided or paid by a hospital district.

SB 905 Patrick
Relating to the application of certain concealed handgun license laws to statewide elected officials, certain current and former members of the legislature, and certain federal and state employees.

SB 1334 Deuell
Relating to the dismissal of complaints against property tax professionals.

SB 1386 Lucio
Relating to the refusal to register motor vehicles by a county assessor-collector or the Texas Department of Motor Vehicles.

SB 1809 Lucio
Relating to a study by the comptroller of public accounts of the economic impact of the Texas-Mexico border wall in the State of Texas.

SB 1866 Davis
Relating to the selection of providers of professional services by governmental entities.

SB 1895 Hegar
Relating to director elections and powers of the Texana Groundwater Conservation District.

SCR 32 Seliger
Expressing opposition to federal regulation of intrastate water resources.

THE SENATE HAS CONCURRED IN THE HOUSE AMENDMENTS TO THE FOLLOWING MEASURES:

SB 656 (31 Yeas, 0 Nays)

SB 1153 (31 Yeas, 0 Nays)

SB 1160 (31 Yeas, 0 Nays)

THE SENATE HAS GRANTED THE REQUEST OF THE HOUSE FOR THE APPOINTMENT OF A CONFERENCE COMMITTEE ON THE FOLLOWING MEASURES:

HB 1
Senate Conferees: Ogden - Chair/Duncan/Hinojosa/Nelson/Williams

HB 1956
Senate Conferees: Carona - Chair/Eltife/Harris/Lucio/Watson

Respectfully,
Patsy Spaw
Secretary of the Senate

APPENDIX

STANDING COMMITTEE REPORTS

Favorable reports have been filed by committees as follows:

May 7

Business and Industry - **HB 3593**

County Affairs - **SB 860**

Criminal Jurisprudence - **SB 887**

Environmental Regulation - **HB 3399, HR 930, SB 1250**

Homeland Security and Public Safety - **SB 244**

Human Services - **HB 2819, HB 3451**

Insurance - **HB 1192, HB 3799**

Judiciary and Civil Jurisprudence - **HB 3172, SB 479**

Licensing and Administrative Procedures - **HB 1563, HB 1809, HB 3042**

Natural Resources - **HB 3859**

Pensions, Investments, and Financial Services - **HB 1681**

Public Health - **HB 167, HB 1128, HB 2788, HB 3371**

State Affairs - **HB 12**

Transportation - **SB 469, SB 1043, SB 1100, SB 1248, SB 1578, SB 1608**

Urban Affairs - **HB 2672, HB 3344**

Ways and Means - **HB 199, HB 472, HB 1358, HB 3704, HJR 48, SB 432, SB 551, SB 977, SB 1385, SB 1505**

ENGROSSED

May 7 - HB 710, HB 751, HB 1278, HB 1418, HB 1788, HB 2029, HB 2329, HB 2610, HB 2678, HB 2704, HB 2814, HB 3393, HB 3483

ENROLLED

May 7 - HB 15, HB 46, HB 906, HB 984, HB 1032, HB 1346, HB 1625, HB 2561, HCR 45

HOUSE JOURNAL

EIGHTY-SECOND LEGISLATURE, REGULAR SESSION

SUPPLEMENT

SEVENTY-SECOND DAY — MONDAY, MAY 9, 2011

HB 274 Debate - Third Reading.S902

CSHB 12 Debate - Second Reading.S933

HB 274 DEBATE - THIRD READING

REPRESENTATIVE CREIGHTON: Mr. Speaker, members, I'm going to go through a couple of high points on **HB 274**. I'm going to also consider or take on a couple of amendments myself—some clarifying amendments that make it a better bill. And then I also visited with Representative Eiland on working with him on some legislative intent from the back mic.

There are five provisions of this bill. First, the bill asks the Texas Supreme Court to promulgate rules to establish a motion to dismiss practice. In Texas, right now, we do not have such a practice where parties come to the court room, or they actually have some litigation that ensues, and there's no remedy at law whatsoever to accompany that—to help them find resolutions. The judge could just simply dismiss the action because there was not a remedy at law. There are 42 states that have a motion to dismiss practice, the federal courts use a motion to dismiss practice, and all they would do was direct the supreme court to promulgate rules to recommend the establishment of the same for us.

Second, it also asks the supreme court to promulgate rules for expedited civil action. So, right now, it's very expensive, as everyone knows, to try a lawsuit, so for cases that have a claim of \$100,000 or less—what we would be doing here is we would be expediting the discovery process, which is very expensive for both parties and time consuming, preventing them from getting their day in court. And we would be asking the supreme court to establish guidelines for an expedited civil action remedy there, where if you had a claim that was \$100,000 or less, then we could get our day in court faster rather than in my county which takes a year-and-a-half to two years to get there. That saves time for the plaintiff, saves time for the defendant, and saves resources for the court.

Next, we have a provision that is called no cause of action implied in statute. What we want to do here is make sure that when we have a statute that is used in a case, if it is ambiguous and it leaves the defendant responsible for proving themselves out of that statute governing that cause, we want to do away with that. We want to make sure that under the statutory construction, that if we have a cause of action, it's clear and concise within that statute for the judge to allow it to be used. For interlocutory appeals, that is—another word for, another description of that is interim appeals—so if you have a trial court litigation taking place and there is a jurisdiction question, right now the way it is in Texas, if both parties agreed, we have a serious issue as to whether or not we even have the right jurisdiction here. They would have to go all the way to the end of that trial before they could go up on appeal and get an answer as to whether or not the jurisdiction was correct. All this bill does is it allows the trial court judge to go ahead and send the case up to the appellate court and allow that decision to be made. That helps the plaintiff, that helps the defendant, and that, again, saves time and resources of the court so both parties can reach resolution on that matter. The judge could not send it up to get resolution on such an interim question unless an application was made by one of the parties.

We make a change to the offer of settlement provision that was enacted in **HB 4** in 2003, where the defendant still has the trigger to invoke offer of settlement in 167. But the way we have it now, when the defendant wins, they still lose because they do not have the ability to get their costs covered. In this change, we have an even playing field where the plaintiff and the defendant equally, if they go through the offer of settlement statute itself, where they're able to recover their costs.

For breach of contract, the last provision is that there can be some cost shifting involved, it's permissive by the court itself, but there could only be cost shifting if the documents themselves worked out by the parties did not cover the way cost shifting was allowed in the first place. So, the original documents would govern, and under the amendment that I'm about to add to the bill, that's the way that last provision would work. So, I have a couple of clarifying amendments, and at this time I'll yield the mic.

REPRESENTATIVE LUCIO: Representative Creighton, I haven't had an opportunity to speak to you about my one—well, I have many concerns, but my specific concern with this bill. A majority of the law I practice—and I am a practicing attorney—is family law. I believe it's your intention to not include the provisions of this bill in the Family Code; however, you have been very detailed and very thorough in how this bill will be implemented, and I would only ask you if we could have a conversation about amending your bill to exclude it from the Family Code. And the reason for it, Representative Creighton, the family law process, the divorce process, is extremely different, in my opinion, than the rest of the litigation world. It's very passionate. We've done a great deal of things in our work here in Austin to change the structure of it and to allow help in that process through para-facilitation, family mediators, whatever it may be. I think the process works very well, and I'm afraid if it is somehow misunderstood—that some of the provisions of your bill be included in the family law process—it would change drastically our ability to get through a very emotional process. Could we at all talk about removing this from the Family Code?

CREIGHTON: Representative Lucio, we've got a provision in the bill where the supreme court may not adopt rules under this subsection that conflict with any provision of the Family Code. And then also under the interlocutory appeals section of the bill, where at the trial court level, if there is an interim question and based on an application from the parties, the judge can send it on up to get an answer at the appellate level for that question that's at issue. The reason why we have that trial court trigger, or gatekeeper provision, in there is for those exact situations. So, if that's not answering your question, then give me some more specifics on what provision of the bill conflicts or—

LUCIO: I'm not sure what could potentially happen at the trial court level that would need to be addressed—that would cause concern and need to be addressed at the family law, in the family law—if you understand how a family law case works—

CREIGHTON: I had a conversation on the floor, right before we called the bill up, with Representative Phillips regarding the same thing, and once we visited about that interlocutory appeals section and the gatekeeper provision in there on Family Code, he was more comfortable with that, so that's why I brought that up, but—

LUCIO: So, when you say trial court—I'm not—I don't know what you mean by trial court being a gatekeeper.

CREIGHTON: Tell me what—again—conversely, tell me what provision of the bill you're concerned about with regard to the Family Code.

LUCIO: The motion to dismiss, loser pays, any of those things and how they apply to—those are my concerns, not necessarily the appeal process.

CREIGHTON: Okay, well, that was my—

LUCIO: Because family law cases don't get—I mean—

CREIGHTON: That was my first answer to you, in the provision of the bill that deals with instructing the supreme court to promulgate rules for motion to dismiss practice—we have Civil Practice and Remedies Code, the Family Code, the Property Code, and the Tax Code outlined there that they're not—

LUCIO: Earlier you said the supreme court cannot adopt rules that would be contradictory to the existing Family Code?

CREIGHTON: The expedited civil action and the provisions for motion to dismiss will not apply to—

LUCIO: Right, because we said it takes 60 days for us before we can even grant a divorce, so that wouldn't apply.

CREIGHTON: If your intention was to get intent—

LUCIO: And what was the other expedited—what was the other?

CREIGHTON: The provisions that are covered in that and excluded from that, is that what you're asking?

LUCIO: Yes. So, settlement offers, loser pays—would that apply to the Family Code under your bill?

CREIGHTON: Look, the only situation in Rule 12(b)(6), your motion to dismiss, where the nonprevailing party would possibly pay is if the judge allowed that. It's permissive, and it's only in the small number of cases where the case would actually be dismissed because there's no remedy at law whatsoever to govern the case. So, if you have a family law case where there is no law whatsoever that would be a remedy to the dispute—which, I would assume, you hardly ever bring a case where there is no remedy at law. It's not even applicable to what you're talking about.

LUCIO: So, for instance, if we have a community property lawsuit as well as custody of children lawsuit, custody of children—I don't believe you can create a loser-pays structure based on who is granted custody of the children. But let's say the community property has a dollar value, and I am the petitioner and the

defendant offers me \$150,000 monetary value, and that encompasses the house, the cars, retirement, so on and so forth; I decline that \$150,000 because I think I'm owed more, or my client is owed more, based on how the retirement structure is, the value of the home, so on and so forth, and it comes back that I'm only awarded \$135 by the jury. Would your bill affect that scenario to where I would have to pay attorney fees because there was a settlement offer on the community portion of the family law matter?

CREIGHTON: Representative Lucio, Chapter 42 excludes the Family Code and offers settlement.

LUCIO: Chapter—okay, so, what instances would your bill apply to the Family Code—if you could just—for intent purposes.

CREIGHTON: The only mention of the Family Code is the excluding, under the expedited claims section, four different sections of codes—we have med mal, we have Family Code, we have Property Code, and Tax Code.

LUCIO: So, it's your intent to not affect the family law litigation process?

CREIGHTON: The only—we're not making any changes to the current law other than the few specific changes that we've made here. A motion to dismiss practice—

LUCIO: Would that apply to the family law practice?

CREIGHTON: We don't have—we don't stipulate one way or the other. We're going to rely on the supreme court to make suggested rules and guidelines for a motion to dismiss practice, and what we're doing is establishing what 42 other states in the federal courts enjoy successfully today.

LUCIO: So, which other states apply your intent for motion to dismiss practice in the family law section—in their family law practices?

CREIGHTON: I don't have an answer to what other states do, but I'm not as much concerned about the other states and how they stipulated it. We're going to rely on the Texas Supreme Court to make those recommendations and then after that branch of government makes those recommendations, if we have issues with their decisions, then this legislative branch can speak to those issues. And then I've got some legislative intent that Representative Eiland and I are going to go through that I think will ease some of your concerns as we direct the supreme court.

REPRESENTATIVE DUTTON: Mr. Creighton, let me start with—this bill applies to every cause of action?

CREIGHTON: Well, there's different provisions of the bill. So, for instance, under the expedited claims action, where we'd have—after my clarifying amendment—from \$500 up to \$100,000 worth of claims, we're not going to have it apply to the Family Code, the Property Code, the Tax Code, or med mal cases.

DUTTON: And, are there similar exclusions under the loser pays provision, or does it apply to every cause of action?

CREIGHTON: That was a similar discussion that Representative Lucio and I had. For the motion to dismiss practice section that we're asking the Texas Supreme Court to recommend guidelines and promulgate rules, they will make recommendations for what that will cover. Now, there's only—for the nonprevailing party in this section to actually owe costs, that's permissive and only allowed if the trial court allows it. And that's in the small number of cases where there is no remedy at law whatsoever to support those parties even being there with that claim. So, when you say—I want to make sure it's clear that might be eight or nine percent of cases, but that's a very small number and only—it's permissive, and only if the court allowed it.

DUTTON: Let me ask it this way—for example, under certain claims, let's take personal injury as an example, personal injury causes of action right now do not permit the winning plaintiff to get attorney fees, is that right?

CREIGHTON: I don't believe that's correct, but go ahead with your question.

DUTTON: No, I think I am, Chairman Creighton. The winner, for example, in a personal injury case, the law does not provide attorney fees for that person. The only way the—

CREIGHTON: Representative Dutton, this bill pertains to offer of settlement, and makes a small change in making sure plaintiffs and defendants have cost shifting there, but—

DUTTON: I understand—

CREIGHTON: Once invoked, under 167, that is the case for the hypothetical that you're giving.

DUTTON: Right, but what I'm getting at, if you'll follow me, is that if, for example, a plaintiff sues under a particular statute that doesn't allow the plaintiff to collect attorney fees, your bill, though, would permit the defendant in a situation to possibly collect attorney fees, is that right?

CREIGHTON: That's the way it exists under current law, but also—

DUTTON: No, that's not the way it exists under current law.

CREIGHTON: —the gross negligence, you would have cost shifting, as well.

DUTTON: No, let me see if I can get you to understand my question. In a lawsuit, in a personal injury lawsuit, for example, where I am suing because somebody ran the light and ran over my client and they injured the person, the person brings the lawsuit. Under that situation, the plaintiff is not entitled to attorney fees. And what my question has to do with is however the way this law affects that is that even though you're not entitled to attorney fees, the other side, Mr. Creighton, what I'm saying—what I'm asking is that when a statute does not provide attorney fees for a plaintiff—for a winning plaintiff—your bill, though, turns it on its head and does permit attorney fees for the defendant even though the plaintiff was not entitled to attorney fees. I mean, the way I read the bill—I'm not trying to prejudge it. I'm just trying to ask the question of whether or not that's the case under your bill.

CREIGHTON: Representative Dutton, under Chapter 42, under offer of settlement, which is all this bill speaks to, cost shifting is already allowed. So, what we're talking about today is you still have your defendant trigger. All we're doing here is allowing cost shifting by both sides depending on—and what this does is it encourages both sides to actually deal with each other genuinely in trying to resolve the case.

DUTTON: Well, would you agree with me that the benefit is heavily weighted on the side of the defendant, though?

CREIGHTON: Well, I agree the defendant can invoke the Chapter 42 itself, but the plaintiff files the suit to begin with, so—

DUTTON: But the burden falls more heavily on the plaintiff under Chapter 42, even as it exists today.

CREIGHTON: I think that, as it exists today, it's not working. So, what we're making a change to is to change that burden that you describe, and it's going to be more of an even playing field for both parties, and it actually may be used now.

DUTTON: How is it going to be even for the plaintiff?

CREIGHTON: The plaintiff brings the case, and if the defendant so chooses, they trigger the offer of settlement provision. If they choose not to trigger the offer of settlement provision, those parties can negotiate settlement without it, but—

DUTTON: Let me ask my question again. How does your changes in **HB 274** benefit plaintiff?

CREIGHTON: It benefits plaintiffs because defendants will be more encouraged to come to the table with a real genuine either offer or counter offer, depending on how the case plays out under that section.

DUTTON: What in the bill presupposes that? What in the bill causes defendants to do that? I don't read it that way, and maybe I'm reading it wrong.

CREIGHTON: The provision of the bill that enables both parties to negotiate and to be successful within offer of settlement is the provision that changes cost shifting to where both parties can benefit from that, whereas now only one can, the plaintiff, therefore it's not used. So, if offer of settlement is not invoked, the plaintiff is going to be hurt because the defendant is not only not going to invoke it, but if they ever actually did they're not going to negotiate it with a genuine intent to find resolution. They may just offer a dollar and both parties—

DUTTON: Let me move on to your Rule 12(b)(6) motion. Does your bill require that when a court dismisses a case on the basis of a Rule 12(b)(6) motion that they have to enter a written explanation of why it was dismissed?

CREIGHTON: I'm not requiring that in this bill, Representative Dutton. All we're asking for is, just as the Texas Supreme Court has promulgated and recommended the Texas Rules of Civil Procedure, we're asking them to make their recommendations to us. Now, they may require that, but we're going to

have to see what they come up with. Representative Eiland and I are going to exchange legislative intent to where the court could consider input from the state bar. And I think that's accomplishing his goal, and maybe yours, to make sure—

DUTTON: Not mine, but I'll tell you, one of the troubling parts about this is, I think you'd agree that this represents a fairly huge departure from our over 200 years of legal jurisprudence. I mean, it's a departure in Texas for Texas courts now to be able to enter a Rule 12(b)(6) motion as they do in federal courts. In federal courts you always get a written explanation of it. Part of the problem is—well, let me ask it this way—you're aware that, in many cases, the defendants always have the option to file what's called a motion for summary judgment, and that usually follows after some discovery in the case, some reasonable period for discovery has taken place. What Rule 12(b)(6) does is simply back that up to sometime even after the lawsuit is first filed. The defendant would file a Rule 12(b)(6) motion asking the court to dismiss it for some basis. Whether or not that's appealable or not, I don't know, I don't read that under your bill, whether that's appealable or not. But to the extent it is appealable under your bill, I think we ought to require that the court enter a written order—a written explanation, rather—a written memorandum at least indicating the basis upon which they granted the Rule 12(b)(6) motion, and that would generally come from defendants. Plaintiffs don't generally file a Rule 12(b)(6) motion.

CREIGHTON: Well, I appreciate your comments and your experience there, Representative Dutton. I fully expect the Texas Supreme Court will make those recommendations with their expertise. And this branch, and you and I together, could always circle around, and if we have a problem with it, we could speak to that.

DUTTON: Well, let me ask it this way then—wouldn't it be better if the supreme court, in adopting those rules, came back to this legislative body for us to approve those, given that it's such a huge departure from what we've done in the past?

CREIGHTON: We'll have our own opportunity anyway to—based on my last comment—to make changes, in that way to sort of offer a de facto approval. But we used to be—

DUTTON: How are we going to do that?

CREIGHTON: Well, because once those rules are in place, we could offer suggestions.

DUTTON: Now, you're aware that under Rule 12(b)(6), under the federal rules, since you're adopting those, when those rules were adopted, they were actually approved by the U.S. Congress, they weren't just approved by the supreme court.

CREIGHTON: Sure. We have a motion to dismiss practice that's under Federal Rules of Civil Procedure, and we have 42 other states, through state government, that have also done the same, and I want to enjoy the success of both.

DUTTON: I'm not arguing with that as a point. I'm just saying that the process has always included at least the legislative body approving the change in those rules, and what I'm asking is whether or not—as I look at your bill, it doesn't contemplate that.

CREIGHTON: Well, I appreciate your suggestion. You know, again, the supreme court in very capable ways made their suggestions on the Texas Rules of Civil Procedure, and I believe in the integrity of the supreme court and their expertise to be able to do that.

DUTTON: Well, are you aware that in previous cases and in some cases previously, we've actually had, as this body, had to be the final step in the approval process for a change in supreme court rules? We've done that in the past.

CREIGHTON: In some cases, yes, I believe, but my intent with this bill is to rely on the expertise of the supreme court to do—

DUTTON: I'm not suggesting we take that away. I'm just saying that one of the parts in the process as we are—well, let me put it this way—you recognize that today, what you're doing is granting the supreme court the permission to make the rules. What I'm saying is that, if we are going to grant them that permission to do it, we ought to at least have some oversight so that when the rules are contemplated, that we ought to have some say in whether or not we believe those are the rules that actually do what we have suggested they do in **HB 274**. And it seems to me that the best way to do that would be for us to at least put into place a provision that requires the legislature to approve those rules, given the fact that we are going to turn it simply—we're granting the complete authority to implement, to develop the rules, to implement the rules, to the supreme court, to the Texas Supreme Court. I believe that if you'll check some of the other states, in many cases that I'm aware of, the legislature, when granting the judiciary the authority to do that, also kept in place an opportunity to improve that. And that's all I'm asking at this point is whether or not—and I suppose, I guess, what you're saying is that you disagree and you don't believe that we ought to have that right as a legislative body, but it just seems to me that the legislature ought to stay in the loop so that we can at least give some idea, or some approval, other than just *de facto*, to the adoption of these rules. I suspect—and one of the things you indicated that they were going to take some input from the state bar, is that right? You were asking the supreme court to take some advice or consent from the state bar in terms of these rule changes?

CREIGHTON: Yes, Representative Eiland and I, after my clarifying amendments, are going to exchange some intent where that would be the case, that they may do that. And, again, you mentioned the Federal Rules of Civil Procedure, Representative Dutton, you know those rules came into being by recommendations from the U.S. Supreme Court. Our summary judgment practice, as it exists in Texas, has come into place by recommendations through the Texas Rules of Civil Procedure recommended by the Texas Supreme Court. And all I'm asking here is to be consistent with that.

DUTTON: Well, yeah, except the rules you named, and some cases were approved by the legislature, are you aware of that?

CREIGHTON: In limited circumstances, correct, but I'm comfortable with the supreme court making these recommendations. But I really respect your opinion, and I appreciate you—

DUTTON: Well, I guess we'll have to talk about that a little bit further because I have an amendment up there to require this body to approve any rules that are adopted under **HB 274** by the supreme court, Texas Supreme Court, because I think ultimately the responsibility falls on us, particularly where we are making such a huge change in our system of jurisprudence.

REPRESENTATIVE HARTNETT: Brandon, I'm curious about page 2, lines 8 through 14. It says, "The supreme court may not adopt rules under this subsection that conflict with the provision of...". Is it your intent to say that if a section of the law is not in that list, that the supreme court can adopt rules that conflict with statute?

CREIGHTON: They can, but these are the provisions we have that are the exceptions established, and the supreme court under expedited claims, through claims of—through my clarifying amendment—which will be a floor of \$500 up to \$100,000, we've got these subsections.

HARTNETT: So, we're letting the supreme court override statutes?

CREIGHTON: Not override statutes, but they're going to promulgate rules that are consistent with what we're asking here.

HARTNETT: I'm just asking for your legislative intent about these lines because you say they can't adopt rules that conflict with the listed statutes. I'm trying to figure out if, by implication, you're saying that they can adopt rules that conflict with other codes.

CREIGHTON: No, I don't have any intention for them to adopt rules that will conflict with other codes.

[Amendment No. 1 by Creighton was laid before the house.]

[Amendment No. 2 by Creighton to Amendment No. 1 was laid before the house.]

CREIGHTON: I have a clarifying amendment that was the result of a lot of hard work through the committee process, the subcommittee process, and working with stakeholders from many areas on this bill to get it to the form that it is today. This amendment, under the expedited civil actions section, we had a floor on—what this section does, again, is for smaller claims up to \$100,000, it just limits the discovery process where you can get your day in court faster. It saves costs for both parties, and it saves resources for the court. We're going to lower that floor of \$10,000 in this amendment down to \$500. And the reason why is that aligns state district courts, county court at law courts, and probate courts to all be in sync with this expedited claims provision. That way, no matter which

court you're in, there's not a conflict there. That was a suggestion of several stakeholders and parties involved. It also amends the expedited—well, that's complete there.

For the controlling question of loss section, on interlocutory appeal, I've worked with Representative Davis, and Judge Lewis, and Representative Hughes on some suggestions there where I had some cost shifting or some fees that were due. If, during an interim question, or on an interlocutory appeal, let's say at the trial court, if there was a question of jurisdiction, the original committee substitute had some costs that were involved with making that request. I've removed those costs.

For the recovery of attorney fees, I'm clarifying that if attorneys have already, for both parties, worked out who owes attorney fees in their documents—in their contracts—which, by and large, most contracts that are executed will have that in place, that governs over this bill. So, if you've worked out attorney fees and cost shifting in your documents, that controls. If it's not mentioned in your documents, then even then, this is permissive by the trial court to allow cost shifting if there is a breach of contract case.

Last, under recovery of attorney fees in the same section, I'm just adding language that says the amount owed to make sure that there is only cost shifting or attorney fees if the court clearly says they are owed. I worked with Representative Eiland on a little bit of clean up language in the same clarifying amendment, and from that, we'll move forward.

[Amendment No. 2 was adopted.]

REPRESENTATIVE EILAND: Mr. Creighton, as you have referenced, I do have some legislative intent language that we're going to discuss. But first, you and I met on this bill, both with yourself and with outside lawyers of your choosing to go through it, right?

CREIGHTON: Yes.

EILAND: And I had several amendments to the bill that were not acceptable, correct? That you were going to fight and not accept.

CREIGHTON: You had one amendment that was acceptable, and from there—you know, I'm doing my best, through working with many stakeholders, through subcommittees and committees, and all through this session to keep this bill as clean as possible so the senate can have a good bill to work with. And from there, I didn't accept any more than that one you and I visited on.

EILAND: Right, and you know that one of the concerns is, unlike back in 2003, on **HB 3** and **HB 4**, where we set up the offer of settlement section of the code in Chapter 42 of the Civil Practice & Remedies Code, in 42.005, we gave lots of legislative intent. And I don't need to ask any questions about that, but one of the concerns about your bill, whereas back at that time, we did give some specific legislative intent on the offer of settlement. In your bill, under section one, we basically give an instruction to the supreme court, "go make up a motion to dismiss practice," and give no restrictions, no guidelines, no limitations, right?

CREIGHTON: That's correct. This bill is obviously not of the magnitude that **HB 4** was in 2003, but you and I are going to be going through some intent now, and I think that will ease some of your concerns.

EILAND: Right, and so, one of the things is, unlike the Federal Rules of Civil Procedure, and especially after the U.S. Supreme Court case of *Twombly*, we have a notice pleading under Chapter 45 of the Texas Rules of Civil Procedure. And it's your intent that nothing in this bill be construed to change or impact the notice pleading requirements of Texas Rules of Civil Procedure 45, correct?

CREIGHTON: Correct, I don't have any intention to change any of the pleading requirements under the Texas Rules of Civil Procedure 45.

EILAND: And the supreme court has previously set up a rules advisory committee which usually, before they adopt any rules, they will either propose a rule to the rules advisory committee or ask the rules advisory committee to propose a rule. And there's not a requirement in your bill that that be done, but as I understand, it is your intent that the supreme court will utilize and refer any proposed rule to the Supreme Court Advisory Committee?

CREIGHTON: That's correct. That is my intention, and I'm assuming from the legislative branch to the supreme court—asking the supreme court to promulgate these rules, they'll use the Supreme Court Advisory Committee anyway, but yes, that's my intention.

EILAND: And then, since we give no guidelines, there was consideration, as I understand it, adopting the California rules, the New York rules, or something similar to the federal rules. And while that has not been placed into your bill, it's your intent that the supreme court consider the California rules, the New York rules, and the federal rules, since they have established a body of law, and practitioners know how to operate under them?

CREIGHTON: Yes.

EILAND: And then I had an amendment that would exempt out from this motion to dismiss area, the Tax Code, the Family Code, the Subtitle A, Title 5 of the Labor Code, which is the workers comp laws, and then Chapter 21 of the Property Code, which is eminent domain and class actions. Because all of those items or codes have their own internal mechanisms, and that amendment was not acceptable, however, it is your intent that when the supreme court adopts these rules, that they not preempt existing law that provides for the process to be followed in the bringing of a suit, such as the Tax Code, the Family Code, workers comp, eminent domain, and class action, correct?

CREIGHTON: Yes, I don't anticipate any conflict there with the rules that they promulgate. I'm comfortable with expressing intent to not conflict with the following.

EILAND: And then Chairman Smithee had an amendment in this same area, because there's no real guideline to the supreme court about motion to dismiss, and I believe there are two of his elements that are agreed to with regard to the

intent, and that is motion to dismiss must be filed—no, I think the only one y'all agree to is that the non-movement must have an opportunity to re-plead, if re-pleading can cure the issue, is that correct?

CREIGHTON: That's correct. If it's determined by either party that there is no remedy at law, counsel should understand that by accepting the case, and there should be no problem at all requiring that to be the first responsive motion.

EILAND: Okay, and then finally, an area that I brought to you as a concern, is a concern of mine in cases where money is not the only object, like libel, or slander, or false imprisonment, or a suit for money and specific performance, a suit for money where the author would include a confidentiality clause. You could not agree with any intent as it relates to those items, correct?

CREIGHTON: Is your question there based on re-pleading to cure an issue that's outstanding?

EILAND: No, I'm sorry about that. Now, I'm moving over to Section 5 where we talk about the shifting of the cost and the loser pays or the offer of settlement area. And I had concerns that we discussed, and I expressed about when it's not just about money and somebody might have to pay, and we could not agree to any intent language in that area.

CREIGHTON: I don't really want to speak to any intent on the offer of settlement provision itself. I mean we're simply making one small change there that levels the playing field for both parties, and I'd like to rely on the supreme court there, Representative Eiland.

[Amendment No. 1, as amended, was adopted.]

[Amendment No. 3 by Eiland was laid before the house.]

EILAND: This amendment makes sure that everybody knows one of the impacts of the bill, and I'm going to tell you why I bring it. At the beginning of this session, Mr. Zedler came to me with the issue of a constituent of his, and it related to **HB 3** or **HB 4** from 2003. When we passed the medical malpractice act—liability reform act—Mr. Nixon told us repeatedly that we were only limiting the recovery for individuals who suffered a malpractice in pain and suffering. We were repeatedly told that there would be no limitations on recovery—economic damages, specifically, lost wages, or medical bills—and that was a big concern for many people.

However, that was true almost the whole way, except there was one provision that said unless you have malpractice from a public hospital, and in that case it is limited and capped at \$100,000 complete, total maximum, no exceptions, it doesn't matter if you're rich and you have a horrible malpractice and lose lots of money, it doesn't matter if you have a whole lot of medical bills—and that happened to one of Mr. Zedler's constituents, and he came up to me and said, "this can't be true, this isn't right," and I said it is not right, but it is true. Because he had a high wage earner who lost a lot of money on lost wages, and had a whole bunch of medical bills, but because it was at a public hospital, his maximum recovery was \$100,000 maximum, no matter what. So, here's a

guy who lost 3 or \$400,000 of lost wages and had a couple hundred thousand dollars of medical bills, his maximum coverage was \$100,000. That was in the bill, and apparently, people didn't understand it. So what I want to make sure everybody knows in this bill—while we may call it "the loser pays" bill—it is the loser pays and sometimes the winner pays too. And let me give you an example. If you have a suit for \$100,000, and your demand is for \$100,000, if you're offered \$80,000 and you say no, and you go to a jury trial and you win \$75,000, you will have to pay the defendant's lawyer's fees, even if they are more than \$75,000, so, not just loser pays, the winner can pay sometimes. And, in our law currently, as it was passed and drafted by Mr. Nixon, there is a floor to make sure that never happens.

But, so everybody knows, when you go home and tell the story to the rotary and everybody, make sure that the businessmen know that—one of the first things that's going to happen this summer in the legal seminars is how do we draft, Mr. Smithee, how do we draft our attorney fees contracts to make sure that we give notice to our clients that they may win and still have to pay the other side money? And I can give you a prime example of this.

For many years I had—it wasn't very big, but—I had the largest verdict in Harris County for false imprisonment. I had a gentleman—an African American, associate pastor and deacon at a church—who was accused of shoplifting. We brought suit against the store. They made a settlement offer before trial of money, and it was in this range of \$80,000, and we demanded like \$125,000. But, what they required of us was a confidentiality agreement, and would not admit that they were wrong. This gentleman was removed from being able to take up the collection plate, which, honestly, if you've got somebody accused of stealing, you don't want them to collect the offering at church, he lost all kinds of privileges at his church. It was not just about the money for him, it was about clearing his name, and being found that he did not shoplift, and that he could prove it to everybody. So, their offer of settlement of money, and no liability, and confidentiality, was not acceptable, so we rejected it. We ended up winning \$75,000, and he was found completely innocent. That was a good day for him.

Under this bill, he would have had to turn around and pay the store's attorney fees to clear his name. And I don't think that's right, and that's what this bill does, it removes the floor that we passed in 2003, so this is not just the loser pays bill, this is the loser pays and sometimes the winner pays. And, the amendment that I had proposed last week—or Saturday—that was not acceptable, would have taken that away, because, think about libel, slander, breach of contract—it's not always just about the money, but this bill makes it just about the money.

REPRESENTATIVE DESHOTEL: Mr. Eiland, if you could review again, I thought it quite interesting about this bill on the scenario where the winner actually ends up paying the loser's attorney fees.

EILAND: Yes.

DESHOTEL: If I'm a small business man and I sue a supplier, for instance, for \$100,000 and there is a counter offer of \$80,000—

EILAND: The trigger is, if you do not beat the offer by 80 percent, then the provision kicks in where you have to pay the other side's attorney's fees. So if you're suing, or the demand is for \$100,000, the offer is for \$80,000, and you recover anything less than \$80,000, you have to pay the other side's attorney's fees, even if they're higher than what you recover.

DESHOTEL: So, the jury could find that I was correct in filing a lawsuit, the jury could find that I was wronged by the defendant, but because they awarded me \$79,000 as opposed to \$80,000, I end up having to pay their attorney fees, even though they're more than the award to me was?

EILAND: Correct. So, this is not about frivolous lawsuits, this is about valid, justifiable lawsuits, and it's not just about slip and falls, this is about business deals, as well.

REPRESENTATIVE OLIVEIRA: Mr. Eiland, you've piqued my curiosity to also inquire about other types of lawsuits, like employment law. Let's say you are wrongfully terminated, accused of theft and there was no theft, and part of your recovery is not just your lost wages for all that time, but maybe one of the things you want is an apology, or maybe you want to be reinstated, which are things that can happen. If those are involved in these offers, are you saying that an injured employee, or an injured businessman even, in a slander and libel suit who maybe the same thing wants, "look, I want the world to know that what you did to me was wrong and I want more than money."

EILAND: Yes, there's an example from Alaska, which has the only other loser pays bill in the state, where a woman sued for unemployment benefits and ended up having to pay, and it was a bad situation. And I say that because, if you look at 42.002 Applicability and Effect, it says, "The settlement for procedures provided in this chapter apply only to claims for monetary relief," all right, only claims for monetary relief. The bill says that if there's a settlement offer to settle all claims in an action between the parties, and therefore, "claims" means claims for money, and sometimes it's not about only money, it's about more than money.

OLIVEIRA: Well, often it's not. In fact, let's take money out of the picture, where you have a client that doesn't care about the money and that is willing to pay you your hourly rate, or your expenses, or both to get—what they want in justice, and justice may not even mean a dollar or a million dollars to that particular individual. Justice might be, just mean saying that, "I was wronged. I was hurt. You destroyed my company with what you said about my product or my work—my life work in my company—destroyed it." What you're saying is if the dollar proposal goes in favor of the defendant, even though the dollar proposal was insignificant to the plaintiff, they have to pay.

EILAND: Yes. And sometimes you want to know, it wasn't me that breached the contract, it was that guy or that girl that breached the contract. And so with that, I move to withdraw the motion to name the act "the loser pays and sometimes the winner pays act" because I want to make sure that everybody understands the impact and implications of this bill when we go home and talk about it.

REPRESENTATIVE SOLOMONS: Not that I do a lot of trial work, by any means, but I know lawyers that do, but what concerns me about this is you could win the lawsuit, and then you could end up paying. I mean, I think you do have—you piqued a number of lawyers' interests who may not do a lot of trial work in connection with that, but I guess the question I have is, what if it comes back and I get 79.5 percent of that—

EILAND: You pay.

SOLOMONS: You pay. It's not like within a range of any sort. You came very close to the 80 percent, you won, but you only got 79.5 percent and then you would end up having to pay, there's no leeway?

EILAND: Nope. Not now.

SOLOMONS: Not under this bill—without your amendment?

EILAND: Right. I don't have an amendment, I was just simply trying to name the bill for what it actually is. There's no amendments because they were not acceptable on Saturday—

SOLOMONS: Oh, that's right, we're not doing that, okay. But I guess my point—and I think even when TLR came to my office to explain it, I asked that question about what would happen if, in fact, I only got 79 percent—you know, I mean—I won.

EILAND: You didn't win by enough.

SOLOMONS: All right. Thank you. I forgot to ask one other thing. This doesn't go to declaratory type actions or anything—it's just really offer of settlement for damages, correct?

EILAND: I believe so, but you better be sure. There are exemptions in the bill as originally filed that says this chapter does not apply to class action, shareholders derivative actions, actions by or against a governmental entity, the Family Code, workers' comp code, something in JC court—and so those are the only exemptions that we put in the law back in 2003, and this doesn't add or subtract to whom this chapter applies.

[Amendment No. 3 was withdrawn.]

[Amendment No. 4 by Lucio was laid before the house.]

LUCIO: Members, if I could just have your attention for a moment. For those of you who have been through a divorce, or have had someone very close to you that's been through a divorce, a loved one, you understand the emotions involved and how this practice is very, very different than any other practice that this bill speaks to. There's usually kids involved, the welfare of those children, you know, where they're going to go to school, child support, all sorts of matters that are uncommon to any other area of the law. I spoke with the author of this bill earlier today regarding his intentions, and whether or not he intended to apply them to the family law—I don't think he intends to—but this amendment will clarify that, especially regarding attorney fees on motions to dismiss. You can only see a case where someone knows their child is in a poor circumstance with a

parent who has custody but is afraid to file a motion for modification, because if they lose that motion, now they're going to have to pay the other side's attorney's fees. There's just all sorts of scenarios we could come up with. Someone who's in an abusive relationship and wants to get out of it with divorce, but now fears not only can they not pay their own attorney's fees, but if for whatever reason, something goes wrong in the case, and one of the provisions of this bill is applied to that scenario, now they have to pay additional attorney fees. Many, many folks that go through the divorce process have to take out savings, have to take out—get into debt to afford to get a divorce, and to make it more costly or more prohibitive. That is not something we want to do in the family law context. So, I ask for your consideration of this bill. I think it speaks very specifically to the author's intent, and I hope it's acceptable to the author, and if not, I hope for your vote.

CREIGHTON: I want to move to table this amendment. Family law cases sometimes involve tort and questions of law—I want to move to table this amendment. I appreciate Representative Lucio visiting with me, just here the last few minutes, on some of the merits of it, but we've worked with many stakeholders on this bill throughout this process, in subcommittee and committee, back to subcommittee and in committee, and we've got a bill that we feel like we can work with. Again, with family law cases, they sometimes do involve tort and questions of law that deserve review. So, I'm going to move to table this amendment.

LUCIO: If you look very specifically, for instance, at the award of attorney fees, it speaks in my amendment, on page 1, Section 30.021, not in a divorce context, but in a motion to modify the parent-child relationship. So, let's just say you're the parent who did not get custody of your child, and your ex-wife or ex-husband has custody of that child, and you file a petition to change that, so that you can, because of whatever issues, regain custody of your child. Under this bill, the way it is structured, if you lose that case, you have to pay for that attorney's fees. So, if you come from a poor family, and you know that your child—you don't have custody of your child, for whatever reason—you know your child is now in a poor circumstance because your ex has now married, remarried, and that new person is bad to your child, or for whatever reason, they're neglecting your child, and you don't have the means to go and file a lawsuit because you can't hire an attorney or afford an attorney, But now, couple that—you're going to have to pay for the other person's attorney—that is, I think, a big injustice, number one.

Number two, in regards to tort—we aren't talking about tort in the family law context. If you're getting a divorce, and you've been abused, or there's been an assault against you, we're not talking about frivolous lawsuits that this body has time and time again voted to circumvent. We're talking about family matters, all very close to us. Think about how this would affect you personally, how it would affect your child, your sister, your son, and how you would want this to be different. You don't want to close the doors to family law matters because it's cost prohibitive. And this bill makes it very clear, anything in the family law

context should be excluded from frivolous lawsuit labels. So with that, I ask you please think about it and vote your conscience.

[Amendment No. 4 was tabled by Record No. 849.]

[Amendment No. 5 by Lewis was laid before the house.]

REPRESENTATIVE LEWIS: This amendment has to do with the responsible third party rule. Basically, since the 1870s, Texas has had a statute of limitations. There's an amount of time by which any party has the ability to come and bring a lawsuit, and if they don't, they just can't bring it. It is absolutely part of the bedrock of our law, and has been since at least the 1870s, probably before then. The problem is, in 2003, there was an exception made in the law, and it has all but killed, for all practical purposes, the statute of limitations. It allows the statute of limitations to be totally gamed. Here's what happens—if a plaintiff sues the defendant, and that defendant says, "Well, I'm not responsible, or I'm only partially responsible, these other people are really responsible," and files a designation of responsible third party—the defendant does—then the plaintiff can sue those other people who weren't sued by the plaintiff first. Then a plaintiff can go in and sue them within 60 days, and if that happens, the statute of limitations for those later added parties is gone. They can't even claim the statute of limitations. So what basically has happened is we have cases in which a plaintiff sues a defendant, and then the defendant enters into a settlement agreement with the plaintiff, and part of the settlement agreement is, the plaintiff says, you know, "I'll let you out cheap, but you name these parties that I didn't sue within the statute of limitations as responsible third parties, and when you do, I'll be able to sue them, and I'll let you out cheap, or I'll let you out for free." And that's what has occurred. This amendment is acceptable to the author.

OLIVEIRA: Representative Lewis, you and I discussed this and we have talked about working on a bill together which I don't think has been able to come out of committee yet. The one thing though that we did talk about was—I agree with you that there needs to be some kind of cutoff. This indefinite open period just makes litigation go on and on and on, and then parties are brought in just to contribute token amounts to a settlement or to—it borders on harassment. I think we agreed on that.

LEWIS: Yes, sir.

OLIVEIRA: Did you allow any time after the two-year statute of limitations, any little window of time where parties could be brought in but eventually it's cut off?

LEWIS: No, sir. What I eventually decided, Chairman, is that the statute of limitations, is the statute—

OLIVEIRA: I'm sorry, Representative Lewis, could you speak up?

LEWIS: I'm sorry. Chairman, what I eventually decided is the statute of limitations is a sufficient period of time that people—it's enough for the plaintiff to decide who should be sued and not sued. And so I've left it at the statute of limitations, as it has been for over a hundred years.

OLIVEIRA: Well, I guess the problem with that is, as we discussed, as you go through the discovery process, you might eventually find another party, particularly in a manufacturing case or something like that where there's other folks that were involved and what came about in making the final product. Would you be amenable to an amendment that cut it off after one year, like we discussed in my office?

LEWIS: Chairman, I wouldn't accept an amendment like that. I mean, ultimately—the thing is, all this does is leave the law like it has been for over a hundred years, like I've practiced under and you've practiced under, until 2003, in which the system couldn't be gamed. You've got two years to bring your lawsuit, you've got two years to find out, at least two years to find out who you think—

OLIVEIRA: If I'm understanding, then—if you bring your lawsuit one year and 300—however many days is one day less than a year, 364, and then you do some discovery in the first six months and you find out that there's other parties, other defendants might want those parties in, as well, and the plaintiff should have an opportunity, as well. I agree there has to be a cutoff. I think that is a problem with current law, and that's why I'm a little surprised you won't now consider an amendment, when we discussed this and you seemed very amenable before.

LEWIS: And I had some talks with some stakeholders, Chairman, about these kind of issues and what we might be able to do on the other side I might say. But we just couldn't get close. And there's always an amount of time—what is that amount of time, what's reasonable—

OLIVEIRA: I don't know, but some amount of time should be allowed, and I thought in good faith we had had that discussion and we were coming to an agreement. In fact, just a few days ago, I asked you were you going to run with an amendment to this, and you said no.

LEWIS: Was I going to run with an amendment? No, sir. Not as we understood each other at all. No, sir.

OLIVEIRA: You know what, I've heard the word "stakeholders" all session long, and sometimes I think the most important stakeholders are the 150 members of the house.

LEWIS: Yes, sir. Thank you Chairman. And Chairman, I might say it wasn't until this bill came up that I thought about—I mean came up here—that I decided to try to file an amendment, rather than last Friday or Saturday. We haven't talked since then.

REPRESENTATIVE WORKMAN: Are you repealing the ability to have a designation of a responsible third party? Is that what this is doing?

LEWIS: No, sir, not at all.

WORKMAN: Okay.

LEWIS: The designation of responsible third parties stays just like it is. The only thing that changes in this amendment is the ability of a plaintiff to sue the people who have been designated as responsible third parties after the statute of limitations is gone, I mean, they can add them, but those people still have their statute of limitations defense.

WORKMAN: Okay.

LEWIS: That's the only change.

[Amendment No. 5 was adopted by Record No. 850.]

REPRESENTATIVE T. KING: Mr. Speaker, while they're deciding whether or not they want to decide this, I had a parliamentary inquiry.

SPEAKER STRAUS: State your inquiry.

T. KING: Earlier—this is nothing bad—earlier, are we operating under, somebody made the motion that every word that was spoken from the front mic to the back mic on this piece of legislation be transcribed and placed in the journal for generations to come?

SPEAKER: That's correct, Mr. King.

T. KING: Now, everything that is spoken from the front mic and back mic is already recorded in the Texas House of Representatives, isn't it? And video?

SPEAKER: Mr. King, it is on audio and video, yes.

T. KING: And that's also there for generations to come.

SPEAKER: Would you restate—

T. KING: And that's also there as a permanent record, is it not?

SPEAKER: Yes, it is.

T. KING: And so, when we make a motion and accept it on this floor on these pieces of legislation that really, the lawyers are the only ones that care about to a great extent—then we are asking some state employees to do the transcription rather than a court reporter that those lawyers would have to pay at some point down the road, is that correct?

SPEAKER: We are asking that the journal clerk make a permanent record.

T. KING: So in effect, what we've done when we do that is, some court reporter, who is probably a single parent supporting three kids at home, is deprived of an opportunity to transcribe this entire proceeding, is that correct?

SPEAKER: Chair is not advised, Mr. King. Thank you for your question.

[Amendment No. 6 by Hilderbran was laid before the house.]

REPRESENTATIVE HILDERBRAN: This is an amendment that was a bill that Mr. Berman, and Mr. Weber, and others, joint authored with them—**HB 911**—to basically disallow the consideration of foreign laws in our courts only when they violate our constitutional rights. So, in other words, if an international law happened to allow brutality, or someone is able to beat their child or wife, or

mutilate someone, and it was somehow permissible by their foreign law, that would obviously violate our constitutional rights, and it wouldn't be allowed. And so, it only limits foreign laws' application to our courts in the case of those laws that violate our constitutional rights. Move passage.

REPRESENTATIVE JACKSON: I didn't hear you say this, but I believe it's only family law?

HILDERBRAN: Only family law.

JACKSON: Thank you, sir.

HILDERBRAN: Yes, sir. We did that based on your work in your committee to narrow the bill so it wouldn't affect global commerce. So, it's only family law. So, a perfect example is if someone used as a defense that their religion or the laws they were under allowed them to beat their wives, their wife, or children—it wouldn't allow that because it'd be a violation of our constitutional rights.

REPRESENTATIVE ANCHIA: Harvey, what if you had—let me just ask couple of questions so I understand this. This only relates to family law?

HILDERBRAN: Right.

ANCHIA: Would it impact prenuptial agreements in a family law context?

HILDERBRAN: Say what?

ANCHIA: Would it impact prenuptial agreements in a family law context? Where, for example—

HILDERBRAN: If the prenuptial agreement allowed behavior that would violate yours or mine or the offended party's constitutional rights, then, yes. That would be my assumption, because here's what we should be for. Obviously, there's a place for foreign laws to be considered in the courts, but when they violate our constitutional rights, those should not be allowed.

ANCHIA: So, I just want to make sure I understand this straight, Harvey. If it impacts prenuptial agreements—let's say there's a party from the U.K. and a party from the U.S., and as part of the prenuptial agreement, they wanted U.K. law to apply, how does your amendment impact—

HILDERBRAN: I don't know for sure—

ANCHIA: Because it seems to be pretty broad—

HILDERBRAN: Let me tell you this; Jim Jackson's committee looked at this very closely, because the bills that were brought to the committee were much broader. And the bill came out of committee as only applying to family law. So, that's the change—

ANCHIA: I understand. Many times, in a family law context, especially when—

HILDERBRAN: I don't want anything considered that violates our constitutional rights—

ANCHIA: No, I understand. I'm aware of no cases where the U.S. Constitution, as it is applied by U.S. courts, is not supreme. I just want to understand—

HILDERBRAN: Unfortunately, there's some crazy judges every once in a while that do stupid things—

ANCHIA: And they usually get reversed on appeal.

HILDERBRAN: But we don't want them considered in the first place.

ANCHIA: Right, and I don't think any of our supreme court judges you would call crazy—maybe you might—but I just want to understand, because this appears to be a pretty broadly drafted amendment. Would it apply in the case of a U.K. citizen and U.S. citizen, where they have contracted with respect to the application of U.K. law in a family law context—would this amendment impact that arm's length negotiation?

HILDERBRAN: Let me yield to one of the authors of the bill.

ANCHIA: Mr. Berman, based on the way the language of the amendment is drafted, we had a U.S. citizen and a U.K. citizen, there's a prenuptial agreement between the two parties in a family law context, and the parties agreed that the prenuptial agreement would apply U.K. law. How does your amendment impact that? Because it appears to be very broadly written. And you have U.S. courts where parties in an arm's length negotiation make a choice of law of something other than U.S. law, a U.S. court will apply it to the best of their ability. So, talk to me a little bit about how this very broadly worded amendment would apply to that fact pattern.

REPRESENTATIVE BERMAN: Well, this is going to happen in many cases, and as long as it doesn't violate our constitutional law, that prenuptial agreement is fine. It's no problem, and we specifically eliminated the word "religious" because, for example, on a Jewish couple that has a divorce, the man has to give the woman what is called a "ket," and a "ket" allows her to remarry. That doesn't interfere with any part of the Family Code, the religious code—

ANCHIA: Right, but no, that's a little bit different than the question I'm asking.

BERMAN: Right.

ANCHIA: Let's say you have two high-dollar movie stars, right? One was from the U.K. and one was from the U.S., and they had an agreement to apply U.K. law, and the lawsuit is filed in a U.S. court applying U.K. law. I just want to make sure there are no unintended consequences to adopting something like this, because this appears to be a little bit broadly worded. You can assure me that that would be okay?

BERMAN: We can use this as intent. It's not our intent—

CREIGHTON: I'm going to leave this amendment to the will of the house.

[Amendment No. 6 was adopted by Record No. 851.]

[Amendment No. 7 by Gutierrez was laid before the house.]

REPRESENTATIVE GUTIERREZ: Members, if I can get you all to listen up here, this is the taxpayer relief amendment, and I know that many of our colleagues do like the idea and I hope that they can sign on to it. This is the

taxpayer relief amendment. Under current law, if you get a contested property tax case, if you win as a taxpayer, let's say, you know, the tax appraisal district gives you an estimate that's well above the 10 percent that they are allowed and you go out and say no wait a minute, that's not the valuation and you contest it and you win, under current law you are capped at ten percent of your costs. What this amendment says, and you can look at it on your FAS, what it says is in an action contesting a tax appraisal, a taxpayer who prevails is entitled to an award of costs in attorney fees. If the appraisal district or taxing authority prevails, the appraisal district or taxing authority is not entitled to costs in attorney fees. Now why is that? Because they have their attorneys; they're already there working, they're doing the things they're supposed to do, they're out there trying to fight these cases against hard working taxpayers and they are there already. They don't need to go hire outside counsel. So this is the taxpayer relief bill right here. It says that if you do what you want to do and go out and challenge these very high property taxes that these folks like to impose on us, that you should have full relief and you should get your full attorney fees after you prevail. So with that, I move passage.

REPRESENTATIVE P. KING: Although at a personal level, having done some of these cases, including my own, I would love for the central appraisal district to have to pay my attorney fees if we prevail, but at a pragmatic level, this would put a tremendous burden that they are not expecting on our central appraisal districts, which ultimately just ends up us paying more taxes at the county level. So with that, I would move to table.

GUTIERREZ: Representative King, you and I have been working quite a bit together in this session, and I really appreciate that spirit of bipartisanship. And so, on this particular point, you're suggesting that ultimately the taxpayer would have to pay to fight these things, and so on and so forth, because of the current limitations. However, these offices already have these people working for them already, it's not like they are going to outside counsel, are they?

P. KING: Well, you know, most of them use an outside counsel, and they have an arrangement with an outside law firm where they work on a percentage basis for taxes that they recover. But this would be such a, and don't get me wrong, at the fundamental level, I really like this because right now you can only recover about 10 percent. I've lost that before, and I understand that situation, but it's such a gigantic change, it's the type of thing that you would need to do, I think, through some interim discussions and a different approach where your CTAs are brought into the discussion. Because it is going to, at the bottom line, they are going to end up paying out a bunch of money to taxpayers because we're all going to line up to appeal, then. Because if we win even a nickel under your bill, if we even get them to reduce our appraised value a nickel, which we will, then they are going to have to pay a lot of attorney fees. And so I think although the intent is very, very good, the practical impact will be very, very bad.

GUTIERREZ: I'm glad that you liked my idea, however, this seems to be the change for big legislation, or this is the session for big legislation, but why are we going to give the guys that collect taxes on us a pass to the detriment of our tax-paying citizens?

P. KING: Here's the problem. If you appeal a property tax case, and you get them to lower your appraised value by one dollar, then they are going to have to pay your \$10,000 in attorney fees, and that's going to be hard on your local taxpayers who are going to have to send the money to do that to the central appraisal district.

GUTIERREZ: I think we have a gentleman who wants to ask some questions.

REPRESENTATIVE PHILLIPS: Representative King, you know, I have a lot of people call my offices that say, "Hey, can you represent me?"—not as a state rep—and they call and they ask, and I say I don't know anybody who will take the cases because you can't afford to appeal it, because the amount of taxes you'll save far exceed the attorney fees. And so there is really no incentive ever for anybody to take these cases unless, you know, and I've done it for some nonprofits and organizations just free to try to help them out. What I understand, all this amendment is doing is saying that the taxpayers have a right here to have some help, to have relief in court because quite frankly, they can't afford to go to court right now—

P. KING: Without question, there needs to be change, without any question. Because you can go in and you can get them to lower it \$5,000, and you pay \$5,000 in attorney fees to get that done, and then they raise it back up the next year. I get it, it needs to be fixed.

PHILLIPS: Don't you think, though, with this in place, a little parity, that maybe the appraisal district is actually going to work with the citizens who come in and contest? Because, you know, right now many of them—

P. KING: It'll level the playing field somewhat, no doubt.

PHILLIPS: Level the playing field, and you know, also, it's amazing how I'll have somebody call and the appraisal district says I've got this property that you appraised very high, would you give me some relief? And they go we'll give you a little relief, but if you push it too much, don't forget, you've got three other properties that could be reappraised, too. And that's the kind of abuse that we've seen across the state. I'm keeping my blood pressure down pretty good about this, but this is one of the number one calls I get, and probably most of us, is appraisal districts not working with their citizens, and when you have appraisers hang up on senior citizens because they don't understand, and that happens, we need to stand up for our taxpayers, and I think this amendment does that. And I know you're not against the idea of helping taxpayers, but I think this would be the best way for us to do it.

P. KING: And again, I'm the guy who's always filing the bills to abolish the property tax system because I don't like it, I think it's unfair, but again, if you—

REPRESENTATIVE OTTO: Mr. King, I'm not an attorney, I don't deal in this area, litigation-wise, but are you telling me that the recovery of attorney fees is limited under current law?

P. KING: I believe it is, yes.

OTTO: To what amount?

P. KING: You know, I'm sorry, it's been a while since I've dealt with these, but I think it's 10 percent of the recovery.

OTTO: Okay, and don't most attorneys that represent taxpayers in this area a lot of times take these cases on a contingency based on a percentage of whatever they are able to save them from what the appraisal review board did?

P. KING: That works real well in the large commercial cases, but when you're trying to deal with the residential; you've got a \$300,000 house and they raised it, you can't justify the attorney fees costs. They won't take it on a contingency.

OTTO: I understand that. Let me ask you this, if this were to become law, this amendment would—what we're talking about here, then, is the concern for the homeowner.

P. KING: Yes, the bottom line is, he's written it so broadly that, literally, if you appeal the case and get them to lower the appraisal one dollar, I can always get them to lower it a dollar, and they get to recover all the costs, and I'm concerned that the way it's written, it's going to create a lawsuit mill. I know that's not his intent, and I agree with Mr. Gutierrez on his intent, but I just think the amendment is not drafted quite right.

OTTO: If a case is taken to district court and it's settled, and it doesn't go all the way through the trial and a decision, in most cases, don't the appraisal district and the property owner agree upon a settlement of attorney fees in some manner?

P. KING: They do. I've had one go all the way, and I think we recovered like \$2,000 or \$3,000 in attorney fees, and the client paid like \$15,000 or something, so it was a small recovery?

OTTO: All right, well I've just been handed something. Are you aware that the court may award up to \$15,000 or 20 percent of the tax owner's liability.

P. KING: Twenty percent, that was the number I was looking for.

HARTNETT: Phil, I'm sure a lot of us appreciate what the representative is trying to do with this amendment, but if you look at line 17 of page 4, this statute only applies to getting attorney fees from an individual or a corporation, so even if we put this amendment on it will serve no purpose because he's trying to get attorney fees from a governmental entity.

P. KING: Chairman, that is an excellent point.

HARTNETT: So we're not accomplishing anything with this amendment.

JACKSON: I'm not an attorney, as I keep telling everybody,, but if I recall correctly, the venue is always the district court.

P. KING: I think it is.

JACKSON: The venue is always the district court on the appeal of a tax suit.

P. KING: I believe that's right.

JACKSON: And it's just impractical to appeal a \$500 or a \$200 case to a district court. This is not the place for this amendment. Venue is the problem for the homeowner, not this solution.

P. KING: This is a problem that needs fixing, I just don't think this amendment is the right way to fix it, and I yield the floor.

[Amendment No. 8 by Gutierrez to Amendment No. 7 was laid before the house.]

GUTIERREZ: Colleagues, thank you. Just to be very clear here, I'd filed both of these amendments and one came in before the other in the wrong order. So, the amendment that you now see before you in the FAS system clearly says, "In an action contesting a tax appraisal, a taxpayer who prevails is entitled to an award of costs and attorney fees." If the appraisal district prevails, then they are not entitled to costs and attorney fees. So that's what I suggested was before you. What you ended up getting was the previous amendment, which was subsequent to, which simply says that it adds this as an enumerated suit. An appeal to the court under Section 11.43, Tax Code, or an appeal to the court of the determination of an appraisal review board on a motion filed under Section 11.45 of the Tax Code, which may actually solve Representative Hartnett's problem in that this would also apply in a Tax Code appeal. And so to that end, what all this does, the prior amendment that I thought was the secondary amendment is it allows this bill to have jurisdiction and venue and so on, and this subsequent one simply says what we're asking that if a taxpayer exercises his duty to challenge his property tax valuation, that he should not pay attorney fees, and the appraisal district damn well should.

[Amendment No. 8 was adopted.]

P. KING: Again, I move to table.

GUTIERREZ: Members, this is not about partisanship. We need 100 votes on this bill. We need 100 lights on a motion to not table. So I'm asking you, for all of those people in your community, for everybody that calls you and complains about tax relief, as they damn well should, because our taxes have gone way too high, for everybody that's out there calling and your constituents, this is a vote for them. A vote to give them the relief that they need and send the tax appraiser where he needs to go, so I'd vote not to table.

[The motion to table Amendment No. 7, as amended, was lost by Record No. 852.]

[Amendment No. 7, as amended, was adopted by Record No. 853.]

[Representative Sheets moved to reconsider Amendment No. 4, which was tabled by Record No. 849.]

LUCIO: After extensive conversation with the stakeholders, and with the author, and all those helping the author with this bill, I think they agree with the intent of this amendment, and I believe it's acceptable to the author.

[Amendment No. 4 was adopted.]

REPRESENTATIVE RAYMOND: This is not a bill that I support, I'm not for this bill, but I want to take a minute because the other night, this bill got caught up in the process of points of order, and I sit on the committee this bill came through, as does Chair Thompson. Chairman Jim Jackson chairs that committee, and as I watched that come down the other night, I know he felt bad because when you're a chairman—

[Amendment No. 9 by Dutton was laid before the house.]

DUTTON: The bill requires a rather substantial change in how Texas has conducted its system of jurisprudence, and what this body is doing today with **HB 274** is we are giving the authority to develop rules to comply with **HB 274** to the supreme court. There's nothing wrong with that, but I think, for all practical purposes, this legislative body ought to retain its right to review those rules before they go and get implemented. What this amendment simply does, it says that any rules adopted by the supreme court under this subsection will be approved by the legislature. That's all it does. We've done this on several occasions where we have had rather dramatic departures from what the current standards are in our system of jurisprudence and this just requires that this legislature stay in the loop. I suspect that one of the things that will happen is that the supreme court will actually ask for comments, and sure, we'll have an opportunity to comment, but I think the legislature should also may ought to have the right to approve or reject any rules that are adopted with respect to this. And with that, I would move passage.

CREIGHTON: I'm going to oppose this motion, or this amendment. Under Article V, Section 31, the Supreme Court of Texas is responsible for the administration and promulgating rules necessary for the efficient, uniform administration within the various courts. Representative Dutton mentioned that we're veering from our standard practice. We certainly are not. The supreme court, in promulgating these rules, they have the expertise to get into the details that will instruct a motion to dismiss practice or whatever we may be asking them to do, whereas in statute, here, we do not get into those details. As a legislative branch, we can always review their recommendations, so with that I'm going to move to table. It's very consistent with what we normally do, and I appreciate you staying with me on this motion. Move to table.

DUTTON: The reason we are giving the supreme court the opportunity to do this speaks for itself, because the supreme court couldn't do it unless we give them the authority to do it. What I'm asking is that this body, though, in doing that, ought to at least reserve its authority as a body that is most representative of the State of Texas to maintain its responsibilities to Texans by making sure we have the right to at least review and approve such rules. I think the supreme court, if you asked them, would probably tell you themselves that's a good idea because

the reality is that while the supreme court is in Texas the highest court for civil actions in this state, they don't do so without us. They can't do that without this legislative body, and one of the things we provide for them is guidance and oversight. That's why we come here and that's why most of these bills that we pass end up getting interpreted by the Texas Supreme Court, to a large extent. And sometimes, members, it can't hurt if we keep us in the loop, so that we provide some oversight when it comes to whether or not a rule ought to be adopted. Even the Texas Supreme Court recognizes that sometimes, members, because the Texas Supreme Court will propose rules and then have all the members of the bar vote as to whether or not those rules ought to be adopted or not.

Now if the supreme court says that, I don't know why it would be so difficult for us not to adopt the same policy. But if we're going to give them the right to implement these rules, and establish these rules, and develop these rules, we still ought to maintain every responsibility we can with regard to whether or not those rules are acceptable to all Texans, and the only way I know to do that, members, is for us to not abdicate our responsibility to Texans and maintain some oversight. This amendment, all it does, it says that any rules adopted by the Texas Supreme Court do not take effect until approved by the legislature. It doesn't matter whether the legislature is a body made up of all democrats, wouldn't matter if it was made up of all republicans; in fact, it wouldn't matter if it was made up of all martians, the problem would still remain the same. And that is that we ought to maintain the responsibility for the rules in this bill, which allows people's right under the access to courts to be cut off. For example, and I know some of you are having difficulty with this because it relates to lawyers, but in the ultimate test, it doesn't relate to lawyers, what it relates to are those people in your district who need and find themselves with a need to file a lawsuit because they seek some redress to an injury that has occurred. If the supreme court is going to adopt rules so that the people in your district don't get their say in court, you ought to be prepared to at least have some responsibility to maintain, or to say that the supreme court has adopted these rules with the approval of the legislature. And with that, Mr. Speaker and members, I would ask you to vote no on the motion to table.

[Amendment No. 9 was tabled by Record No. 854.]

[Amendment No. 10 by Dutton was laid before the house.]

DUTTON: Again, in another section of the bill, if you'll look at page 1, line 23, at that section, it also empowers the supreme court to adopt rules which I believe ought to be approved by this legislative body. Perhaps there's 95 of you who don't feel that way, but I'm just suggesting to you that you ought to pay attention to this because the people in your district are the ones most affected, not you, not the lawyers, not the supreme court, not the judges in this state. The people most affected are going to be the people who we represent, members, and I believe we owe an obligation and a duty to them to make sure that any rules that are adopted

fall within the guidelines that we have given the supreme court. The only way we're going to do that is if we maintain some oversight, and with that, I would move passage.

CREIGHTON: The Texas Constitution already directs and allows the supreme court to do exactly what we're asking for in this bill, and again, just like Representative Dutton's former amendment, I move to table.

DUTTON: Well, I can say ditto, too, but I'm talking to the 95 of you who voted against the last amendment. If the Texas Constitution gave the supreme court the authority to do this, then why do we have **HB 274**? It wouldn't make sense; we wouldn't need **HB 274**. If the supreme court could already do this, then why are we telling them under **HB 274**? It simply makes no sense. And what we're really doing, members, is abdicating our authority to the supreme court to make rules that benefit the people in this state. Yes, we've designed a system, and to most of you it probably doesn't make a lot of sense right now, but at some point it will, because what's going to happen is when someone from your district comes to you and says, "Well, wait a minute, I had a legitimate lawsuit, it got dismissed, and I want to know why." And the lawyer says, "Well, go see your state representative," and you say, "Well, we gave the supreme court the authority to do that." That's the wrong answer. That's the wrong answer. You ought to be able to say that, yes, I gave the supreme court the authority to do that, with only the proviso that they come back to us, they come back to me to get it approved. That's all this amendment does, members, and so I would ask you to vote no on the motion to table.

[Amendment No. 10 was tabled by Record No. 855.]

[Amendment No. 11 by Dutton was laid before the house.]

DUTTON: Under the actions which don't apply to **HB 274**, what this amendment does is actually add only employment discrimination cases. And let me tell you why that is, because employment discrimination cases are unlike most other cases, they already have a body of law regarding attorney fees, and so, I don't believe that this **HB 274** ought to apply to labor cases because they simply are a different breed of animal. Such that, if you were adopting it under the federal code, for example, or at least under the state statute, the only thing that's going to happen is people, or plaintiffs, will now just bring their cases in federal court, you won't have any of these cases in state court if you apply **HB 274** to labor cases. That's the reason I bring this amendment, and I would move adoption of the amendment.

CREIGHTON: Again, I'm going to move to table this amendment. This was an exhaustive process on this bill through subcommittees and standing committees, working with many stakeholders, and we want to keep the bill in its present form, and I move to table.

DUTTON: You all are getting me all choked up. But let me tell you why. Because most of you are not voting on the merits of this bill or these amendments. Most of you are voting because, well, let me just put it this way: Just as Julius Caesar said before he went back to the castle, he said, you know, "cowards die many deaths, only a valiant man dies once."

[Amendment No. 11 was tabled by Record No. 856.]

RAYMOND: Members, I'll be brief. As I said earlier, I'm not for this bill, I oppose it, but what I really want to do is tell you that Jim Jackson, who chairs this committee, has been extremely fair to us. And I wanted to make that point because this is his first time as chairman, and if you were here when Jim Jackson first got here, you'll remember he was a little rough around the edges, and maybe that's what happens when you've been on the Dallas County Commissioner's Court for a long time, but it has been great to work with him, as I know Chair Thompson agrees. On that committee, he's served everybody, he served all of us. He ran a great committee, and I just wanted to compliment him and thank him for that.

EILAND: The only reason I'm speaking is because Mr. Solomons asked me to, to make sure that everybody is clear that you could win your lawsuit and still have to pay the other side's attorney fees. So let me tell you exactly where that is. That's on page 7 of the bill, lines 26 and 27. What happens is we removed 42.004(d) and (g); 42.004(d) and (g) is where in 2003, Mr. Nixon's bill, there was a floor put in during that tort reform session so that you could never go below zero, so that you would never have to come out of your pocket to pay somebody else's attorney fees if you won. And so, when Mr. Creighton says he didn't change any of the percentages, he is correct. The defendant has to make an offer, you have to not beat it by 80 percent. If the plaintiff makes an offer and beats it by 120 percent after the defendant invokes this chapter, then those numbers don't change.

However, what is being taken out in this bill is the floor. Once the floor is gone, you could win the lawsuit, the jury says this is a valid, legitimate business dispute, but if you don't beat the offer by 80 percent, you could have to pay the other side's attorney fees. And that is in the case of a small business versus a big business, a breach of contract, and any other thing. So I want to make sure, and Mr. Solomons asked me to make sure that you understand, by taking out (d) and (g) of 42.004, that legitimate lawsuits, where a jury determines that you are in the right, you could still have to pay the other side's attorney fees if you don't beat their offer. His point was, what he was asking, \$100,000 demand, \$80,000 offer, you win \$79,500, you have to pay their attorney fees. With the floor in there, you would never go below zero, but in this case if the attorney fees are \$100,000 and you only recovered 79.5, you have to come out of your pocket \$20,500 to pay the other side's fees even though you won your legitimate lawsuit. That's what the bill does, there's no dispute about it, and I want to make sure everybody is clear. If you don't agree with that provision, but you love the rest of the bill, white light

it and put a statement in the journal saying I loved the rest of the bill, but I don't like that part. I can't vote for something where people with legitimate lawsuits have to pay at the end of the day.

REPRESENTATIVE SHEETS: Mr. Eiland, isn't it true under the current law we have an offer of settlement rule?

EILAND: Yes, that's what we are amending here.

SHEETS: And isn't it true under the current law that if a defendant invokes this rule and wins the case outright, in other words, there's a take nothing judgment, he doesn't get the benefits of this provision at all?

EILAND: Under the current law?

SHEETS: Under the current law.

EILAND: Yes.

SHEETS: And doesn't this bill fix that problem?

EILAND: It over-fixes it. Not only does it work in case the defendant wins, it works if the plaintiff wins, because the plaintiff has to come out of pocket if they win the lawsuit. Period.

SHEETS: Isn't that the case in the current law right now, if the plaintiff invokes the rule and the judgment is more than 120 percent of the offer?

EILAND: Let's make sure not to mislead anybody at all. The provisions of this bill from 2003 until today and it continues, the plaintiff can never invoke this chapter.

SHEETS: Can't the plaintiff invoke this chapter once the defendant has?

EILAND: Only the defendant can invoke this chapter. Once the defendant invokes this chapter, then the plaintiff can respond. If the plaintiff responds, and at trial wins more than 120 percent, then the plaintiff can recover under this bill.

SHEETS: Part of your concern is that the defendant would low-ball in their offer when they invoke this rule—isn't the provision in there to protect the plaintiff, so if it is not a reasonable settlement offer, the plaintiff can then reciprocate?

EILAND: My concern with the bill is that you could win your lawsuit, it's a legitimate lawsuit, and you would still have to end up paying the defendant's attorney fees.

SHEETS: And is the reciprocal true currently? Couldn't the defendant win and not get the benefits of this provision at all? So it makes this rule, the current rule, ineffective, doesn't it?

EILAND: No.

SHEETS: Really? How many times have you seen this rule used?

EILAND: Very little.

SHEETS: And wouldn't you agree that's because the current rule is ineffective?

EILAND: No.

SHEETS: So why would I, as a defendant, invoke this rule if I can't recover my attorney fees if liability is not found?

EILAND: I don't know.

SHEETS: So doesn't that make the rule ineffective?

EILAND: No.

SHEETS: I disagree with you, sir.

EILAND: Okay.

REPRESENTATIVE V. GONZALES: Representative Eiland, you were mentioning the inequities of being able to win and still lose, and it's all premised upon what the offer of settlement is. And isn't it true that a jury never knows if there were offers of settlement? So a jury can't make it right because they'd known what the offers are.

EILAND: Correct, the jury would never know if an offer has been made, and if so, how much, and if there is even insurance that applies to the case.

V. GONZALES: Thank you.

EILAND: So members, please vote yes, no, or white light if you don't like all the provisions.

CREIGHTON: The best that I can understand from Representative Eiland's comments is that he is encouraging you to white light the bill. The math that Representative Eiland is referencing is from the current law as passed in 2003 in **HB 4**, not from this bill. This bill is still under offer of settlement, 80 percent to 120 percent, and this bill encourages plaintiffs and defendants together to work out a settlement, in genuine negotiation efforts to reach compromise and move forward. So with that, I appreciate your patience, Saturday and today, and move passage.

SOLOMONS: I did talk to Craig about it and try and understand it since I don't do a lot of trial work, stuff, by any means, but I know a lot of folks who do, and I also am concerned about taking the floor out. I don't think you're incorrect, and I think he is correct in the sense that if you are taking out the floor, if I win a lawsuit and it's pretty close to the thresholds that we've done, somehow, it would appear that if my attorney fees are high enough, I could end up paying the loser's attorney's fees and pay my attorney's fees, and that's just doesn't quite seem right, and I'm not sure how to fix it. I'm not sure the members here really understand that, and I certainly have some thoughts both ways on it, so the idea of me wanting to perhaps white light it to make sure that there's clarification on a bill that we're sending off this floor; I don't know if that's necessarily bad or not. I mean, do you?

CREIGHTON: Representative Solomons, I respect your point, but that is the current law as it stands, that's not changed.

SOLOMONS: The thresholds are, but are you not taking out the floor? Are you taking out the Section D, that I was shown, by Mr. Eiland?

CREIGHTON: We are taking out the cap.

SOLOMONS: Right, you're taking out that floor. So, if in fact, I get back 79—I get an award for 79.5 percent, my attorney fees are going to be \$65,000 and then I still owe attorney fees on top of that to you, then, in fact, I've got my attorney's fees plus your attorney's fees. So, I still won the lawsuit and I got pretty darn close to the cap. So, at the end of the day, I'm for the bill in a lot of ways for what it's trying to do about making settlement offers work. But, how do I feel comfortable about paying attorney fees for somebody who's going to lose? They lost the case, and by the way, since juries don't know what the settlement offers are, and they have no idea about how to work this, it seems to me that we need to be very careful about what we're doing. It may be that it'll get resolved over in the senate. I hope it does, and I'm not going to go against the bill, but I am going to white light the bill.

[**HB 274**, as amended, was passed to engrossment by Record No. 857.]

CSHB 12 DEBATE - SECOND READING

REPRESENTATIVE SOLOMONS: This is the bill we, I guess, had some debate on for almost six hours on Friday, and there was a point of order. It's back on the calendar. I have an amendment that I would like to adopt, and then I'll be happy to debate and discuss the bill based on that amendment.

[Amendment No. 1 by Solomons was laid before the house.]

SOLOMONS: This amendment obviously is acceptable to the author, which happens to be me. This amendment is really a floor amendment that is the bill as it was presented to you, along with—it includes, on page 3 of the amendment, the amendment that was filed last time by Mr. Larry Gonzales. And a number of members—well over I think 70 some odd—signed onto this amendment, which basically is one that puts into place, in the bill specifically, about not being able to profile. And it also includes, not considering the race card, but it also includes language or national origin. Well, there are already statutes in place in my opinion—federal and state statutes—but a number of members have talked to me about the bill and wanted to put something in there very specifically, and I was more than happy to do it. The second amendment that was filed from Friday that was included in the amendment was one by Mr. Aliseda, Mr. Peña, and several others, including myself, involving health care. And it deals with the issue of ensuring that our hospitals and our hospital districts, under certain specific statutes that have to deal with general or special law involving healthcare services, would be ensured that they would not have this argument over whether or not they adopted a policy involving access to health care. And so, that's pretty well what the amendment does, and it is acceptable to me as the author.

[Representative Solomons moved to postpone further consideration of **CSHB 12** until 4:30 p.m. today. Amendment No. 1 was pending at the time of postponement.]

SOLOMONS: This is the infamous sanctuary city bill that we have been dealing with all afternoon on a possible amendment, and also we talked about it and debated on it somewhat on Friday afternoon. When we broke on this bill and I postponed it, we had an amendment that I had filed in connection with rolling into the floor amendment two amendments that had been prefiled on Friday which had to do with Mr. Aliseda's concerns over health care issues. And also, Mr. Gonzales had a number of members in this body, both republicans and democrats, also signing on about ensuring that we have some provision in the bill having to do with racial profiling. So that amendment was going to be acceptable to me and then we were going to go from there, so that's where we left off. And as far as I am concerned—what we decided to do, with the idea of having some debate on the bill will be that I will withdraw my entire floor amendment that included the Aliseda and Gonzales amendment. Mr. Menendez is going to do his amendment, which tries to strike the whole bill and we won't have a bill, and then we'll have a vote on that. And then, since I will oppose that, obviously, then we will move onto floor amendments that I have signed onto, dealing with the Aliseda amendment separately, then the Larry Gonzales amendment separately, and then I had another amendment involving DPS. And then Mr. Hochberg and several school—Mr. Eissler and Mr. Huberty had an amendment dealing with the an issue on the schools that was very narrowly drawn, and then we will go from there.

REPRESENTATIVE PHILLIPS: Will you allow us to at least vote on the school amendment, or are you just going to accept it?

SOLOMONS: Which one?

PHILLIPS: The one that you said we're going to cut the schools loose.

SOLOMONS: Well, we're not cutting the schools loose. The amendment that I am speaking of that we are going to go ahead and debate, that would be acceptable to me—because Mr. Hochberg and Mr. Eissler and I had a discussion about, and I think Mr. Huberty signed onto it or maybe somebody else—but basically, that one went to the FERPA issue about records, that wouldn't apply if it came under FERPA, and then we would go from there. And then there may be other school amendments that we will have a chance to deal with.

PHILLIPS: So FERPA is a federal act?

SOLOMONS: Right.

PHILLIPS: And they're saying it's their responsibility to do certain things, and we have to comply?

SOLOMONS: Well, we'll get into that with that amendment, but it has to do with that particular issue—

PHILLIPS: I just hope you would let us vote on it.

SOLOMONS: I believe that Mr. Olivera, or someone else, has an amendment that would deal with taking the schools out of the entire issue, and we will have a nice vigorous debate over that and see what happens.

[Amendment No. 1 was withdrawn.]

[Amendment No. 2 by Menendez was laid before the house.]

REPRESENTATIVE MENENDEZ: Members, we had 43 immigration bills referred to State Affairs. We heard many, many arguments for and against. But members, I want to share a personal story with you. Yesterday was Mother's Day, and many of us had the opportunity to spend time with our mothers. And some of you know that I am the proud son of immigrant parents. My father fled communist Cuba in 1961, and my mother came from Mexico as a nurse, who was actually recruited to help solve a nursing shortage in this country. And the story I want to share is about a young newlywed couple. They had just purchased their first home in Mission, Texas, in the Valley. And Dad, like most people who get their new homes, had put on his work clothes and went outside to start painting and fixing up his house. Dad left Cuba at the age of 37, not because he wanted to, but because he had no choice. At the age of 37, he was a farming rancher in Cuba—he didn't speak English. So when he was painting his home, a law enforcement official came over and started questioning him, and my father didn't understand. When my mother fortunately came home from work at the right time, she came home to find my dad in the back seat of a police cruiser. Why? Just because he didn't understand? Why? Did he look like a criminal? Was he taking anything, or was it just the way he looked? Was it the way he sounded? I don't know exactly why that law enforcement officer chose to put Dad in the back of that car. But fortunately for him, Mom was able to go in and get his proper documents and came out and saved him that day from going to jail unnecessarily.

Members, we have over 9 million Hispanics living in this state, 9 million Latinos living legally in this state. The reason I put forward the amendment before you, members, is that there is no way that we can perfect this bill, no way that we can make this bill what it will actually do. The words in this bill aren't exactly what cause the problem, because I heard my good friend Burt Solomons talk about how this would reinforce trust in police, make sure that they were doing what they were supposed to be doing. Members, the problem is not 90, 95, 98 percent, 99 percent of those good officers. The problem is that small percentage, that we all have in any industry, that are going to take this bill as a license, a presumptive license, to be able to detain people. Based on what? I've heard time and time again that they don't have to ask anything. No, you're right, and you know what, maybe most law enforcement officers won't. But then, in committee, I asked my friend Burt Solomons about a hypothetical. What about my 70-year-old-plus mother who helps take care of my 18-month-old nephew? What if she's driving—and she came as an adult—and she forgets to signal? She's speeding. She runs a stop sign. She does anything that is possible investigation of a crime, and in committee, I asked, "Would those qualify?" Yes, they would. Traffic violations qualify. So, she gets pulled over. She speaks broken English, she likes to listen to the radio in Spanish, but she doesn't carry her passport. She doesn't carry her naturalized citizen papers with her. Members, when I came home one day, and Arizona had just recently passed their law, my mother asked me, "Do I have to carry my passport now?"

The problem with this bill, members, is not the one and a half or one point six or however many undocumented citizens people say live in Texas, because that does nothing to address those folks. The problem is that 9 million Latinos living legally in this state are now going to live in fear. And for all of us in this room, we can defend ourselves. We know the law. We speak the language. We don't have a problem. But members, many of you in this room have family members, loved ones, friends, people you work with, people you go to church with, who are now going to have some fear in their lives. You know, this year we get to celebrate the 175-year history of this great state, 175 years. And I remember six sessions ago, and I don't recall if it was Warren Chisum, but it was a senior member, who stood at the back mic and asked another member, "So, you mean to tell me in the 165 years of history of this state, how did we get along without this great piece of legislation?" And that's the question I have to ask you. When I asked my friend Burt Solomons, and Burt knows this is not personal with him—I respect and care for so many of you on both sides of this aisle, so much of the sacrifices we all make, the conversations we've had about the family times that we've missed, the children, the sporting games. I just want you to know that when you cast this vote—unfortunately, if this bill becomes law, you will have put over 9 million people in a state that they don't need to be in. And the particular ones that I am most concerned about are my senior citizens, the children who are in school—I think Burt is going to take some amendments to deal with school districts. You know, the question came up at the back mic about schools. So now do children have to live in fear? Are we going to have children not go to school, or parents who are migrant workers not send their children? Maybe they're children born here in this country, legal citizens, but maybe because now the school district police have a right to ask them about their citizenship, maybe they shouldn't go because mom and dad are not documented.

I understand, and I don't believe that I will be able to change the process, the life of this bill, but I want you to know when you cast your vote that there are 9 million-plus of us Hispanics in this state who will now feel like a second class citizen in this state. So many of us who have given so much—you know, on so many issues, I would go arm to arm, shoulder to shoulder with any of you in this room to do anything. But unfortunately, you know, you wonder about why the tensions have run so high. This issue, it's not hypothetical. This issue is personal, and it's not personal me versus Burt or me versus any of you in this room. It's personal because of the unnecessary fear that it's going to strike in the heart of so many of our senior citizens who just happen to look different, who just happen to be Hispanic. Members, I don't understand, I really don't understand the need for this policy. I really don't know why we need to go backwards in our civil rights. I see this as a reverse, a step backwards, 35 years of civil rights, all in the name of trying to solve a problem of undocumented, illegal citizens in this state. You know, Lois, I voted for your bill, I brought your bill up to take the criminals, the undocumented criminals, to the congress or senators—Murphy, Jim, I voted for yours. You know Rene, Pete, and I, and so many of us, we don't care where criminals are born. We want them all gone. We are not here to defend any criminals. I don't care where their place of origin is. And I think that you

will find that most if not all Hispanics will share that sentiment with you. When you cast this vote, I hope you realize that it will be a vote that 9 million Hispanics will take personally.

REPRESENTATIVE ALVARADO: Representative Menendez, thank you for sharing a very personal story. And you're right, it is personal for those of us, all of us, that oppose this bill. But I want to bring up another view of this bill, and that's on the law enforcement side. And you served on the city council of San Antonio—can you talk about the impact that this has on local law enforcement?

MENENDEZ: You reminded me of something. Not one police chief from around the state came and testified for any of these bills. We, on city council—I was just talking to my good friend Lyle Larson, who was on the city council before he went on to commissioners court. Lyle and I, we knew of a police officer who was married to a lawyer, in our city, who would go out of his way to go and break whatever policies the chief had or wanted in the city, and then turn around and sue the city of San Antonio. To go out of his way to find ways—the city would come down and he would say that we had infringed on his rights. My concern, Representative Alvarado, is that we, in this bill, we say chiefs cannot run their departments, because if a chief chooses to make a priority—we heard it, we had the debate with Representative Anchia, 9-1-1 calls, or certain types of crimes in certain districts, and a certain officer, or officers, if they chose to make it a priority to, in the lawful detainment of pulling over someone, to interrogate and hold someone as long as they want, if they choose to do that, the chief cannot intervene. That's where this is a big problem.

ALVARADO: And we make laws every day that affect home rule cities. But what we are doing here is we are directing a department head, in this instance a chief of police, and telling him or her how to run their day-to-day operations, taking away their discretion, taking away their flexibility, taking away their local control, disrupting the chain of command. Are you familiar with the Major Cities Chiefs Association?

MENENDEZ: Of course.

ALVARADO: Okay. It's an organization that dates back to the late '60s, their position was this—and again, I think it's important when we have bills like this that we rely on the experts. We rely on the people that legislation impacts. We rely on the people that will have to carry out what we pass. And here's what they said—that we should take into account limited resources, the complexity of immigration laws, limitation on authority to enforce, risk of civil liability for immigration enforcement activities. And they have other concerns about this, that it undermines trust and cooperation of the immigrant community, lack of resources—there is a list that goes on and on.

MENENDEZ: Representative Alvarado, we heard testimony both in committee and in Arizona where a bill similar to this has passed—what I was going to say is that we have heard is that, in particular, in cases of domestic violence, there could be a chilling effect if one of the two parties happens to be undocumented. We could put a chilling effect on the very communities that we depend on to help us

solve crime. And what I think our communities send us up here to do is make their communities safer, to bring jobs. I think they'd like us to have the best public education system we can. I think they'd like us to take care of the higher education system. You know, when I was on city council, we passed a back to basics budget, and it was about the basics. And when I got here I was thinking, maybe we could do some more of that. And, unfortunately, sometimes I feel like we just don't deliver on those issues that our communities are asking for. Now, I know that there is frustration, in some parts of the state, with criminals who happen to be undocumented, and I'm ready to stand shoulder to shoulder with anybody who wants to go after those folks.

ALVARADO: And I don't think anyone is saying that we are not in support of inquiring about someone's citizenship. But, for example, in Houston and so many cities, almost every other city in the state of Texas, they utilize Secure Communities, a safe communities initiative, where when someone is arrested and booked, then their immigration status is inquired upon. But this bill goes far and way beyond, and I think it's hypocritical for us to pass this unfunded mandate down to city councils, to commissioners courts. Think about when the federal government is imposing mandates on us. For example, I think the only thing I can think of that comes close to this comparison is the Medicaid program, when the State of Texas tried to get the federal government to allow us to run it the way we wanted to, and we were told no, you have to run it this way or you will lose your money. And in this sense, we're telling cities the same thing. We're telling other governing bodies you have to do it this way, otherwise you will lose state grant funds.

MENENDEZ: Not only that, and I understand, and I'm sensitive to the hammer that we are holding over school districts, any pseudo governmental entities, cities, counties, where we are saying that if you do something that is contrary to this particular bill, that we are going to keep you from receiving any state funds. But more importantly for me is the issue that possibly on some desolate road, somewhere in some rural part of Texas, someone can get pulled over and get detained. And in the bill, and in the testimony we talked about, could they be detained until immigration, some ICE agent showed up, or until their immigration status was resolved, or as long as the officer wanted? And the answer was yes. So how long can you have someone detained during a routine traffic stop just because you cannot resolve their immigration status? Now, no, the bill doesn't say they have to do it, but it provides the cover, the license. It does say that no chief, no city, no supervisor, no manager, no director, no one that has supervisory control can impede that law officer from doing that, and that's the problem with this bill. That is why it is not able to be amendable.

REPRESENTATIVE FLETCHER: Representative Menendez, is this the law that if you are in this country as a visiting alien, that you have to have your green card, your papers, on you at all times?

MENENDEZ: I assume it would be.

FLETCHER: That is the law. How has this law, this bill, changed that? If a person is in this state, and they are here as a visiting alien and they are required by our federal law, not our state law, but our federal law, to have a green card and to have their papers on them to identify who they are as visitors of this country. And obviously it goes way beyond the fact that—you're trying to make this an issue about our Hispanic family members, friends, and those of us, you know, members of this state that are Hispanic. This is about the terrorist element of our world that are in this country. We want them to have their papers on them so when a peace officer confronts them, and has probable cause to interact with them based on the fact that they may be out there committing a crime, that he can identify that person. So that is one point that I want to make. Another point I'd like to make—

MENENDEZ: Allen, hold on one second, you were asking a question right?

FLETCHER: Yes, sir.

MENENDEZ: Tell me the question again.

FLETCHER: The question is, do you believe, and understand, that when you are in this country, and you are not a citizen of this country, that you are required by law to have your papers on you?

MENENDEZ: Yes, the answer is yes. Is there another question?

FLETCHER: Yes, there is another question. Are you aware of the fact that the technology in our state and in law enforcement today gives peace officers the ability to check on someone's identity based on the fact that they can give them your name, your date of birth, a place that you work, an address? Are you aware that that technology is in our police officers' vehicles, and on their person, on their radios and stuff?

MENENDEZ: Absolutely, Allen. But I think you missed my point earlier in my layout of my opposition, my amendment. My opposition is not—I'm not trying to change the federal policy that says people must carry their documents as far as if they are legally visiting this country, or even if they're not. The 9 million people who live here legally, the 9 million people who are citizens, like my 70-some-odd-year-old mom—my mom was born in 1935—sorry Mom, I can't figure it out. But—

FLETCHER: Representative Menendez, do you know how many police officers, men and women, there are in the State of Texas?

MENENDEZ: I don't.

FLETCHER: There's a couple hundred thousand that are certified Texas peace officers.

MENENDEZ: Okay.

FLETCHER: Do you truly stand before this body and say that you believe that the men and women that are out there protecting us, the ones that we call when we need help when there is a problem, cannot make an educated decision, based

on the fact, when they come in contact with someone in this state, whether or not it's based on asking them questions and looking at the documentation they may or may not have, whether or not they are in this country illegally or legally?

MENENDEZ: Allen, you asked about my judgment over 200,000 men and women who serve us. Allen, I am wearing a CLEAT pin. You know, I don't know if you know who they—

FLETCHER: I know who they are.

MENENDEZ: I'm pretty well recognized by CLEAT, pretty close to them. I pass a lot of their legislation. So I agree with you, but once again, in the layout, Allen, I talked about the fact that there are bad apples in every organization, Allen—

FLETCHER: Okay, I heard that. But have you not noticed that every time someone talks against this bill, they make the point that peace officers cannot be trusted to make educated decisions about whether or not someone they come in contact with is in this country illegally or legally?

MENENDEZ: I haven't said that once, Allen. What I said is that this bill unnecessarily creates an atmosphere of distrust, an atmosphere in which the folks who live here legally, but may not speak the language very well, they are the ones who are going to say, "Now do I have to carry my passport?" My mother has been a naturalized citizen for many, many years. So, do you carry your passport with you?

FLETCHER: I do not.

MENENDEZ: Okay, but now my mom feels like she should. Why should she be any different than you?

FLETCHER: I don't understand why you think that this law says your mother has to carry a passport. Your mother has to be able to identify herself as a person who is legally in this country. That would be based on the officer's determination based on the questions he may ask her. Does your mother speak English?

MENENDEZ: Very broken English.

FLETCHER: Do you think a peace officer would be able to understand that your mother was here legally in this country? I bet she'd be proud of you and tell the officer that her son's a state representative.

MENENDEZ: You know, I don't know, and that's the—

FLETCHER: Well, I'd hope that she would.

MENENDEZ: And that's the problem. I don't know how she would react under stress. And that's the thing, Allen, it's not—it's bad public policy when we unnecessarily put people in a position where they have to—U.S. citizens—they have to defend their right to be in this country.

FLETCHER: But, Representative Menendez, we as peace officers, and the men and women of this body need, based on the crime that is being committed on our border with the drug cartels, based on our peace officers losing their lives. The

other day at our ceremony, that I am sure you were there, that you talked about 31 men and women in the last two years. That's way too many, and some of them are being killed by illegals in this country, not necessarily Hispanics, but just illegals, period. The point I'm making is these are decisions, and these are tools, that we as people of this state, and as peace officers in this state, need to make sure that someone is here legally. And I just don't see that this bill is going to make the 9 million men and women that you are referring to—that I am glad they are here, I know they are members of this state. The ancestry of some of them is the reason we have this great state, and I do not believe that this bill will cause our men and women that are peace officers to treat them unjustly.

MENENDEZ: I happen to agree that a majority of the law enforcement will not treat them unjustly. I agree with that.

REPRESENTATIVE OLIVEIRA: I will be brief, at least briefer than I have usually been. Mr. Fletcher was right about one thing, when he talked about the great history of our great state, where Tejanos and Mexicanos fought side by side to establish this republic. That's why we have streets named Sequin, Saragosa, and others. The city/county where Mr. Kuempel comes from, I think that is a beautiful history of our state where we have always been open, and open to each other. And I can only tell you that this bill is the most divisive bill I have seen in my history in the legislature.

Let's put ourselves in the car for a moment, put ourselves in the car. You're Hispanic, you don't speak very good English. You look in the rearview mirror. The red lights come on. All of a sudden, you're wondering, why am I being pulled over? And I venture to say it doesn't matter whether you are Hispanic, or African American, or Asian, or Anglo, or whatever, we all get a little anxious whenever those lights come on. Was I speeding? Did I do something wrong? Oh my gosh I just left that function, did I have too much to drink? Whatever it may be, that anxiety is there, but now, now, now we have created a whole new layer of anxiety for honest, law abiding citizens and legal residents of our state. How many of us do carry our birth certificate or our passport? There are many, many people in my district that do not speak good English, that are the kind of people that my good friend Representative Menendez talked about, that are now going to wonder. And Mr. Fletcher, I know that most law enforcement people are good people, but I know there are some real bad ones, and you're naive to think that they're not out there. Because as I said before, it used to be you'd get stopped for driving while black; well, now you'll get stopped for driving while Mexican. And it will be because of how you look, and because of how you speak, and because of your ancestry and your ethnicity. And those people love this great country and this great state just as much as everyone in this room. Who is going to be stopped? Is it going to be the blonde-haired, blue-eyed Canadian that is here illegally, because there are millions of those? No. We know who is going to get stopped. We know who is going to get pulled over. We know who is going to get interrogated. And if an officer has had a bad night, or maybe he has his own unfortunate prejudices, and wants to take it out on somebody, he or

she now will be able to do that. He or she now will be able to hold that person for hours, and elevate that layer of anxiety and fear, even if they are here legally. Until you have walked in my shoes, you don't know where I've been.

When I came up here in the early '80s, it was democrats and republicans that were not receptive to minority rights, and we have had to fight for everything we have gained. And my fear here is that we send out a message, we send out a message to other countries as well, particularly our largest trading partner, Mexico. When Mexico gets a cold, we sneeze. Our businesses, our economies are interlocked. What is happening in Arizona can happen in Texas, where the hotel-motel industry, where the convention industry is all suffering because people don't go to Arizona, and I don't want to see that in our state. I want our tourism to thrive. I want our trading relationship with Mexico and other countries to thrive, and I want us to be this open beautiful place where everyone is welcome.

Now, if you are here illegally and you commit a crime, let me tell you what the current practice is. I even, at the request of my good friend Charlie Geren, he came down to the Valley and wanted to know how this was being done in law enforcement. And what was made clear to him, through meetings he had with law enforcement people, federal and state, is that what happens now, if somebody is stopped and arrested, they are brought in, and their immigration status is immediately checked. ICE agents are there within hours. If they are not there that night, they are there the following morning, and they are getting these people that you and I want out of this country. I do not want to tolerate that violence in the school yard, that drug-dealing in the school yard, and if it's coming from somebody that is here illegally, I say deport them. When we were in committee, we talked about this. We pledged to Chairman Solomons, on another bill—that for some reason, even though we were all in favor of it, continues to sit in Calendars—and that bill said that if you were arrested, a city, county, or institution, whatever law enforcement institution, would have to check the status and work with ICE. I don't have any problem with that. This isn't about illegals. This is about the people that are here who reside, and work, and go to church, and know you, and work with you, and worship with you. That's what this bill—that's why it is so divisive to us.

REPRESENTATIVE BERMAN: Rene, I think you know, I think the world of you, and Jose, and everybody in this house. So we are just having a discussion. I read the bill. What has to happen first, before you will see those red lights in the back of your car? What has to happen?

OLIVEIRA: Presumably, there is probable cause, but we know many police officers stop people without probable cause.

BERMAN: But the bill says there has to be some sort of a violation, you have to run a stop sign, a red light—

OLIVEIRA: And I'm glad you brought that up, because I want to talk about the sanctions here, too. I'll walk you through, as a lawyer who has practiced criminal law for 31 years, how all that works. So let's talk about the sanctions, and let me spend a minute talking about schools, and then I will come back to you. The

school part is the most disturbing part to me, and I have tried to work with Burt. And I know, even as passionate as I get, members, and I apologize sometimes because I get too passionate about the issues I believe in. I know it's not personal, and I know that Burt is a great human being, and he is carrying this bill, and he believes in it. But once you have a policy in place—and I have to address this and spend a minute on it, because I don't know if the amendment that I have and Representative Huberty has co-signed with me, and Representative Pitts, and Representative Patrick, and Representative Peña, and Representative Eissler—I don't know if he is going to take that amendment. But let me talk about the deal with the schools. What this says in this bill is that a peace officer or security person who works for a school district, a licensed peace officer, can make the inquiry, or maybe has to make the inquiry, or the school district will be in violation, and if they make that inquiry, and if they ask those two 12-year-olds that were busting each other in the playground for whatever reason, I want to know if your mommy or daddy, where they are from, do they have a green card. Do we really want security people in our school districts making those inquiries? And the fix is already, because the fix is already in the other bill that we passed out of committee, and it's already in existence, as I showed Representative Geren, who cared enough to go down to Brownsville and see how it works. If you are arrested for a crime, your immigration status is checked. We don't need to have security cops who work for a school district doing this. We don't need them terrorizing school children about whether they are here illegally, when maybe that morning they did the pledge of allegiance to the United States of America. That's not the kind of Texas I want, or you want.

BERMAN: The next thing that happens is, a police officer stops you for committing a crime, and both you and Jose were talking about papers like we were a Nazi Germany or a Gestapo agent who would stop you and say, "Let me see your papers." If you are in a car, and the 9 million Hispanics, legal Hispanics in this state, of those who are driving, the police officer will ask the same question: "Can I see your driver's license, your registration, and your liability insurance?" If you have them, the odds are 99 percent that they will let you go. They won't even ask you anything if you have those three documents. You don't need any papers. There are no papers—

OLIVEIRA: I wish, Leo, I could live in that Pollyanna world, but that's not the world I've lived in, that's not the world I've seen. That's not what I have seen at the courthouse and that's not what I have read in the history books of our great state. There has been prejudice. There has been discrimination.

BERMAN: Well, of course, I agree, sure.

OLIVEIRA: And there will continue to be, and maybe there's not a lot of prejudicial bones in this body today, but we know out there that there are people who will do racial profiling. And we can put on an amendment that says thou shall not do racial profiling, but they're going to do it, and now they are going to be empowered to do it. And now they are going to have a blanket amnesty to do it, a word that I know bothers many people in the immigration world. But that's the problem, Representative Berman, it's those people who don't need much of a

reason if they don't like the color of your skin. They don't need much of a reason if they don't like how you speak, or your language. And that is what happens in Texas, and I wish it wasn't that way. And I fear that what we are putting out today is a mechanism that's going to make that a practice that is valid and good for all to use.

BERMAN: I wouldn't want to see that happen.

OLIVEIRA: I believe you.

BERMAN: I don't want to see any profiling happen. I don't have a racist bone in my body, but I do believe the majority of police officers, especially in a town like San Antonio, which is governed—the mayor is Joaquin's brother. We have Hispanic government in San Antonio. We have many Hispanic police officers, and there are many Hispanic police officers throughout the Valley. In fact, in the Valley, most of the police chiefs are Hispanic, themselves.

OLIVEIRA: And they are all against this bill, Leo.

BERMAN: I know.

OLIVEIRA: Every single sheriff and police chief that I have talked to around this state is against this bill. I haven't seen any letters of support from anybody in law enforcement saying we need this. You know, it started with sanctuary cities, which we still have yet to identify. We haven't found one yet. And now it has become sanctuary MUDs, and sanctuary junior colleges, and sanctuary counties, and sanctuary school districts, and on and on and on. Where is this sanctuary? What city has a banner out there that says, we welcome all you illegal aliens, please come and take our services, please come and exhaust our economy. It's not there. It doesn't exist. Now, do we have a problem with immigration laws? Yes. And the exclusive authority to decide that is the United States federal government. It is not the states.

BERMAN: I agree. However, the United States government has done absolutely nothing for the last 13 years that I've been in this house. I know you've been here a lot longer, and I think you'll probably admit the United States government has done nothing. They are not enforcing immigration laws—

OLIVEIRA: I will agree with you that the United States government has failed in some of its mission.

BERMAN: Completely.

OLIVEIRA: But, well, I won't agree with you on that, because now there are several thousand border patrol agents, or ICE agents, working very hard to deal with this problem, and we are deporting more and more criminals than we ever have, and I am glad. I am proud of them and the job they do. And Mr. Fletcher, it is not easy to be an ICE agent. Police officers shouldn't be ICE agents, and ICE agents shouldn't be police officers. Their functions are different.

REPRESENTATIVE ALISEDA: Buenas tardes, mis amigos. Yo me llamo Jose Aliseda. I am a Mexican immigrant. My skin is brown, I look Hispanic, and I'm not afraid of **HB 12**. Why? I want you to look at the two statutes that I've

scanned into the chamber documents. What apparently no one in this body has argued or is aware of is that this has been the federal law now for 16 years. President Clinton signed those two statutes on your chamber documents in 1996. Now, if you look at the words of those two statutes, they're nearly identical to **HB 12**, which means that even though these laws have been the law of this nation for 16 years, I've been driving Mexican that entire time and I have never suffered from ethnic profiling, unnecessary detention, or harassment. One of the things that these grandstanding politicians fail to tell you—I think they fail to tell you intentionally, knowingly, and recklessly—is that this bill is some kind of Arizona bill 1070, and it is not. This bill does not require law enforcement to check on immigration status. In fact, the same federal judge that struck down the mandatory immigration inquiry of Arizona 1070 approved the anti-sanctuary cities part of that same bill.

Two final observations that I want you to keep in mind as we debate the merits of this bill and any amendments. Also, as part of your chamber documents, I've included the Texas attorney general opinion by Greg Abbott. It cites the same two federal statutes that I have previously discussed, and states that we "have the right to pass some form of legislation designed to compel local governments to comply with any duties that they may have under federal immigration laws, so long as that legislation is not inconsistent with federal law." And it further states that any sanctuary policy is likely a nullity. Furthermore, I want you to look at—furthermore, I'd like for you that took an oath, which is found in Article XVI of the Texas Constitution, I want to remind you of that oath. "I, Jose Aliseda, do solemnly swear that I will faithfully execute the duties of the office of state representative of the State of Texas and will to the best of my ability preserve, protect, and defend the Constitution and the laws of the United States and of this state, so help me God." This is the same, or similar, oath that is taken by every mayor, city councilman, police chief, sheriff, or law enforcement officer of this state. And I am saddened that we have already spent hours arguing that any public official, including ourselves, should be allowed to disregard our oath to preserve, protect, and defend the laws of the United States. Members, the law is the law. This bill does nothing more than require the governing officials of cities, counties, or any other governmental entity to follow the law and their oaths of office, and not enact policies that violate the laws of this state and this country. Keep that in mind when you vote on this bill and this amendment.

MENENDEZ: Mr. Aliseda, are you a lawyer?

ALISEDA: Yes.

MENENDEZ: So you, as a lawyer, probably have, what, 16 years of education? Is that correct, approximately?

ALISEDA: Yes.

MENENDEZ: The reason I ask is that the majority of my constituents don't have that much education. You stood up here and you said that you are not afraid of this legislation, correct?

ALISEDA: Yes.

MENENDEZ: You stood up there and you said that the federal government passed this law 16 years ago, correct?

ALISEDA: That's right, signed by President Bill Clinton himself.

MENENDEZ: So then why do we need this state law if this is already the law of the federal government?

ALISEDA: Because, as usual, what the federal government does with respect to immigration is not put any teeth into anything. All this bill is doing is adding some teeth.

MENENDEZ: Well, yeah, earlier, in the previous layout of the bill, Chairman Solomons said that this bill did very little. And are you aware of any sanctuary cities in the State of Texas?

ALISEDA: I'm not aware of any, no.

MENENDEZ: So—

ALISEDA: So what are you afraid of, if there are none?

MENENDEZ: Well, I'm not afraid of anything. Are you familiar with the term "unintended consequences?" I know this is your first session, but you're a smart man.

ALISEDA: Yes, I'm very familiar with the term "unintended consequences."

MENENDEZ: The reason that I bring that up, Mr. Aliseda, is because many times—we pass laws here with the greatest of intentions, and then they go into effect, and then we hear back from our constituents, after they've been in effect six months, a year, and then we hear back, "How on God's green earth did you do that? Why did you do that?" Are you familiar with the margins tax?

ALISEDA: I'm not—I want to talk about this bill, and I want to talk about the fact that this bill, this law was passed 16 years ago by the federal government, and if you take the time to read the statutes, "notwithstanding any provision of federal, state, or local law, a federal, state, or local government entity or official may not prohibit"—may not prohibit—

MENENDEZ: That's fine, Mr. Aliseda, but you know, I would never presume your intentions for doing anything, and I think that when you stood at the front mic and you said you that were concerned with grandstanding politicians, that you possibly would, hopefully, choose your words a little more wisely so as not to go towards the intentions, because you don't know what's in my heart.

ALISEDA: I'm upset that there's been a total mischaracterization in this house, and we've had this debate for hours, that this is some kind of Arizona 1070, and it's not.

MENENDEZ: But the net effect of this legislation will be the same feeling by the residents of this state that many Hispanic residents feel in Arizona. The net effect is going to be that they are going to feel that they're going to have to provide proof of their migratory status, whether they're legal residents, U.S. citizens, or naturalized citizens, and that's why I am opposed to this legislation.

ALISEDA: I'm telling you that this has been the law of this country for the last 16 years and that has not happened. Why is it going to happen now?

REPRESENTATIVE GUTIERREZ: Buenas noches, colega.

ALISEDA: Buenas tardes.

GUTIERREZ: Buenas noches. Ya, es la noche. Si quieres, podemos seguir adelante en español, pero para el beneficio de nuestras colegas, yo creo que en inglés, verdad?

ALISEDA: Si, verdad.

GUTIERREZ: I, too, am the son of immigrants, and this nation is very important to me. I have a concern, though, with the characterization of many things here tonight. I have a concern with the characterization that you suggested that we're wasting time on this piece of legislation. Did you not just say that we're—that we have an oath, I think, that we take an oath here today, and that's to uphold the duties and laws of the state and the United States. That's correct?

ALISEDA: That's correct.

GUTIERREZ: That's also the kind of laws that engender racism and discrimination. We have that kind of duty as well, do we not?

ALISEDA: Yes.

GUTIERREZ: And so, if certain members of this body feel that it is genuine, that this law genuinely engenders racism, racial profiling, and discrimination, I think it is disingenuous for you to mischaracterize our intentions as grandstanding. And so for that, colleague, I take offense to you and your comments.

ALISEDA: I'm trying to understand why you feel that way when this has been the law of this country for the last 16 years.

GUTIERREZ: I want you to tell me what sanctuary city is in the State of Texas. Name one.

ALISEDA: I don't know. I didn't listen to the committee hearing, but if there is—

GUTIERREZ: You're talking about it. Name one.

ALISEDA: I was not at the committee hearing, but if there is none, what are you worried about?

GUTIERREZ: You know what I'm worried about? I'm not only worried about those unintended consequences, but I'm worried about the overzealous police officer. You know what? You smirk as if they don't exist. You smirk as if your own people have not been discriminated by law enforcement. You know what? Ninety-nine percent of law enforcement—many of my friends are in law enforcement and I think they do a damn good job for the people of the State of Texas—but I can tell you case after case in this state's history where people have been discriminated at the hands of the law.

ALISEDA: So we don't pass laws because you're afraid that there's one percent, or a tenth of a percent, that might somehow abuse the system?

GUTIERREZ: We should pass a law when a problem exists, colleague, and you have yet to elucidate and illustrate a problem for us.

ALISEDA: Well, let me understand this. We've had people come and testify that they are afraid this bill is going to make them spend money, because apparently they have policies already in place—

GUTIERREZ: What happens in Bexar County, and in Houston, and in Travis County, and in Austin, and in Dallas, what happens when a person gets sent to the jail? Can you tell us?

ALISEDA: Well, I would assume that there is some kind of immigration status check.

GUTIERREZ: That's right. And then what happens? ICE has 48 hours to come get that person, do they not?

ALISEDA: I'm not familiar with that particular provision of the law.

GUTIERREZ: I would respectfully submit to you that they do. This is a problem that doesn't exist, and you're the people that are wasting the people's time on this legislation.

REPRESENTATIVE ALONZO: I'm going to speak for this amendment, and I want to start by saying, as well, this is personal, and let me tell you first why I say it's personal. I know people have said this doesn't happen, I don't think people should be worried. Well, let me tell you why it's personal. My dad was born in Toledo, Ohio—anybody know where Toledo, Ohio, is? You don't have to raise your hand. Then he grew up in Mexico, and I always wondered, now, how did he grow up in Mexico when he was born in Toledo, Ohio? Well, about six to seven years ago, I went to a funeral in Toledo, Ohio, because what happened is my grandparents—my grandpa Emeterio and my grandma Luz—went to Toledo, Ohio, to work in the fields, tomato fields. And while they were there in the late '20s/early '30s, they had five kids, and one of them was my dad. If you know a little about history, in the '30s, they said there was an economic problem in the United States, and they said the way we'll fix this problem is we'll kick the Mexicans out of the United States.

The reason I know this is because six or seven years ago, I went to a funeral for my Tio Tony in Toledo, and my Aunt Rosa said, "You know, in the '30s we went to Mexico, and my mom was crying because she said, "How am I going to take these kids to Mexico when they're not Mexican?" Anyway, what happened is, as teenagers, they came hiding from Mexico into Texas, and they hid in the farms in South Texas, because they thought they were Mexicans, and at some point they were going to come and pick them up and get them arrested and deport them. Then one day, they were sitting around talking, and they asked, "Where are you from?" And they said, "Mexico." "Well, which way did you come from?" "This way and that way." And they said, "Where were you born?" "Toledo, Ohio." Then they said, "Well, you're not a Mexican, you're a U.S.

citizen." And I say that because my mom—my dad already passed away—but I still have an aunt, Estela, that does not speak any English. She cannot speak any English. And when she crosses the border, every time she goes to Mexico, she's asked, "Why don't you speak English if you're a U.S. citizen?" And my Aunt Estela says, "Because I don't have to." And she doesn't.

Now, in this bill, we say it's not bad, it's not bad, it's not bad. Well, I told you my story, at least a little bit. But now I want to read another story, and you probably got this letter on May 7, 2011, at 11:40 p.m. It's from a lady named Sandra McSwaine from Brownwood, Texas, who sent the letter from another lady who said the following—and it's by Estelle Camacho. These folks write this letter asking that we vote against **HB 12**, and she says, "I am a native of Brownwood, and have always been loyal and patriotic to my town, state, and nation. My parents were the late Cenario and Petra Camacho. They were loved by their friends and respected by members of our proud community. The late Mayor Truman Harlow signed a proclamation honoring them June 20, 1983. My parents had 11 children. They taught us the value of education, to serve our community, and to be productive citizens wherever we chose to live. We have had successful careers as educators, administrators of universities and medical schools, employees of the U.S. Postal Service, employees of the Texas Youth Commission, and the Texas Commission for the Blind. My late brother, Noah, was named employee of the year for the Texas Commission for the Blind, and my other brothers and sisters have been recognized numerous times for their respective achievements. Not only did my parents make sacrifices for their children, they also supported several students from Howard Paine University on their path towards graduation."

She says, "I have reluctantly mentioned several details from my personal life so that whoever reads this letter might understand why I felt exceedingly hurt, frustrated, and disappointed. On March 30, 2011, when I went to our local office of the Texas Department of Public Safety to renew my driver's license, I was told that I could not renew my license unless I provided my birth certificate. The renewal notice from the Texas Department of Public Safety listed several examples of accepted proof of identity, so I took my social security card, as well. A subsequent telephone call to Austin DPS did not answer my questions of why, after almost 40 years of driving, that the local office determined that I did not have adequate proof of my identity." She says, "There were several Anglo gentlemen ahead of me when I returned to the office of DPS with my birth certificate. As I waited in line, I observed that no one asked them for a birth certificate. I am left with the only explanation for having been treated differently: I experienced racial discrimination. The experience makes me wonder about the effect of the voter ID being discussed in **HB 12**, the effect of discriminating on the basis of ethnicity or skin color. My parents taught us to build a community inclusive of all differences, taught us to value respect, honesty, and trust. They believed, as I do, that everybody can share those values, regardless of their social issues, religion, or ethnic group. I remain loyal to my state and country. I pray that my experience was an isolated one. It does not represent the community where I live."

Members, this is one example, and I can tell you, having talked to many folks in my district and representing my district, that is type of legislation, even by the mere fact that we're visiting on it, even by the mere fact that we're voting on it, is something that always reminds me—as we grew up, we were told sticks and stones can break my bones but words will never hurt me. Well, the community out there is listening, and the biggest issue in the Hispanic community is this legislation. As we stand here before, throughout the state, people are wondering, are we going to be like Arizona? Are we going to be like Arizona? In 1994, we thought about being like Arizona, and we said no. Now, Arizona says they want to be that way, and today we get to decide whether we want to be like Arizona, and I hope we don't make the decision. So I support this bill, and I ask that you vote for it, as well.

REPRESENTATIVE HOCHBERG: I'll try to be brief, but you mentioned driver's licenses, and it was one of the things that I was looking for an opportunity to ask about. It's pretty difficult, in a lot of cases, to determine whether you have the right papers, isn't it?

ALONZO: That's correct.

HOCHBERG: And are you aware that DPS, with all their training as our leading law enforcement agency in the state, recently had a situation where they erroneously attempted to remove commercial driver's licenses from a large group of legal immigrants who were here? And it required the intervention of immigration attorneys and several of our offices to right that situation so that these legal immigrants would not be without their driver's licenses. If it's that difficult for DPS, how difficult is it for a well-meaning, well-trained officer on the street to determine positively whether a person has the appropriate identification if they are a legal resident of this country?

ALONZO: Well, let me tell you, I have a letter here from the office of the governor of Illinois that talks about something similar that we're trying to do here. In fact, right now, even though we're trying to attempt to do something at the local level, at the state level, but there's already a national law, as Mr. Aliseda pointed out. Why do we want to implement a federal law when there's already a federal law to do that? But let me point out, in this letter, it says that they tried to do this program called Secure Communities. And it said, "The stated purpose of the program as set forth in this memorandum of understanding is to identify, detain, and remove from the United States aliens who have been convicted of serious criminal offenses and are subject to removal." But they don't—they say they want to stop people for serious crimes and over 30 percent have been deported for no serious crimes, for no crimes at all. So the unintended consequences, as we're talking about, that's one of the consequences that may happen as a result of this legislation.

HOCHBERG: But I want to make very, very clear, I was talking about legal residents of this country who were committing no crimes. They were going to work. They were working as commercial truck drivers, and they found out that their licenses were going to be withheld because DPS couldn't get the documentation requirements correct.

REPRESENTATIVE LUCIO: The only reason I choose now to speak against the bill and for this amendment is because there is some uncertainty as to whether or not debate is going to be cut off. This is a bill that I take personally, like many of my colleagues, because of the subject matter. I am not grandstanding, but there has been a lot of discussion about this bill, both in my home and in my community, and I just wanted to share a few thoughts. I am not the son of immigrants. I am a fifth generation Texan. My grandfather is a veteran—God rest his soul, he has now passed—but he was a veteran of foreign wars, fought in World War II. A very, very patriotic man, I've never met a more patriotic man. Since I can remember, he wore his VFW hat, since I was a little boy. And I grew up running around the VFW halls. And so, I am a very patriotic person, and I do respect, wholeheartedly, the Constitution and this great land. I also grew up around the border, so I have that culture in me, as well.

I just want to share a few points. When I was 15 years old—see, I grew up in this process. I grew up coming to this Capitol before I can remember much else. When I was 15 years old, my dad was elected in 1986 to the Texas House and served there and then served in the senate. I came to see him. I was at the Harlingen airport during the winter Texan season. For those of you who don't know what winter Texan season is, we have a whole bunch of people from the north come and enjoy our beautiful South Texas weather. I was 15 years old. I had no ID. I was much darker back then because I played a lot of golf, for those of you that know my golf story, and I was in line at the airport, dirty from having played outside all day, t-shirt, shorts, flip flops and a cap, and a walkman. And I'm in line at the airport. The next thing I know, I'm listening to my music, and I get pulled by the shoulder and thrown against the wall, and I started to have this border patrol officer speaking to me in Spanish. I'm a little embarrassed to say this, but I didn't speak Spanish growing up, and at 15 I spoke very little Spanish. I speak a little bit better now, but I didn't speak it back then. So I'm looking at him, and I have no idea what he's asking me, and being 15 and a model student, because of my great parents, I had never been in trouble. I had never been talked to like that. I had never been treated like that. So I start to cry because I didn't know how else to respond, so I probably looked very guilty to this border patrolman. So I start being put in handcuffs, and if it wasn't for someone who recognized me, a friend of my father, I probably would have gone through a much more emotional time than I had. He stopped at that point and let me go. But I continued to look at this border patrolman. See, there was a big line of a lot of people, but since it was winter Texan season, none of them looked like me. They all looked a lot like you. They did not have dark skin, and they were from another part of the country. He did not ask one other person in that line what their immigration status was. He just walked away. I was 15 years old, and I didn't know much better, I just kind of put my head down and got on the

plane—there was no cell phones back then. I got off the plane and as soon as I saw my father, I broke down and cried like a little baby because I didn't know what had just happened. If that had happened to me now, of course, I would have the ability to defend myself, but this is the situation—and this is a border patrol officer with training for this very specific thing. This is a situation that, inevitably, we are going to put our kids through.

The other night, I was laying awake at night, and I was praying that God would give me some words to be able to express to you what it means, if this bill passes, to some of us. And I guess he answered that prayer, because the next day my dad brought me some Bible verses that speak specifically to this issue. I'm not a man who very often quotes the Bible, and I'm glad he gave me the verses and chapters so it would be accurate, but I'd just like to read a few to you. "For I was hungry, and you gave me food. I was thirsty and you gave me drink. I was a stranger, and you welcomed me." Matthew 25:35. "God administers justice for the fatherless and the widowed and loves the stranger, giving him food and clothing. Therefore, love the stranger." Deuteronomy 10:18. "I will be a swift witness against those who exploit wage earners and widows and orphans, and against those who turn away an alien, says the Lord." Also, "Ye shall not oppress a stranger, for you know the heart of a stranger for you were strangers in the land of Egypt." Exodus 23:9. "The stranger who dwells among you shall treat as one born among you, and you shall love him as yourself for you were strangers in the land of Egypt, and I am the Lord your God." Leviticus 19:34. And the last, "Ye shall have the same law for the stranger as for the one from your own country." Leviticus 25:22. Members, we often seek guidance. We have prayer groups in this Capitol every week, and we ask the Lord for divine intervention to make the right choices here.

REPRESENTATIVE VO: Mr. Lucio, I just want to tell you, not only you and your Hispanic colleagues have concern about this bill, but I myself have concern about this bill also, because of the unintended consequences. And do you know that I represent a district that has a large first generation immigrant, and do you know that the school district I represent has over 70 different spoken languages? And many of them, like I said, are first generation immigrants who came here to this country, and they've been very productive to our community, but many of them also speak broken English, and many of them did not speak the language at all. And what I'm afraid of, if this bill were to pass, it will create a lot of unintended consequences for the community. When I go back to the district, what should I tell them? I tell them from now on, you better carry your passport with you, or your naturalization papers with you, because every time you're stopped by police for any kind of traffic violation, you might be detained if you don't have your paperwork with you to prove that you are a legal person in this country. Is that correct?

LUCIO: That's correct. And I think back to our forefathers who founded this country, and we are a country of immigrants.

VO: Exactly.

LUCIO: The last I remember, Europeans weren't here. It was American Indians who were here. We are a country, and we founded this country, on the belief that we would welcome all those into our country. You know, I feel for folks who are going to have to experience the consequences of this bill. And I don't think that—and, for the record, that border patrolman's last name was Garcia who did that to me.

VO: Representative, I want to share the story of when I first came here to this country, also. I remember very clearly, it was in the afternoon that I walked home from a grocery store with bags of groceries in my hands, just walking along the sidewalk. And a police car just pulled up, and for no reason at all, just asked me for identification. They didn't ask nobody else that was walking along the sidewalk with me, but they had to stop me and ask me for identification.

LUCIO: And it's hard to accept that, isn't it?

VO: Exactly.

LUCIO: It's hard to accept that because you may look different, speak differently, with a different tone of skin, that you would be selected out for no other reason than those three things. And I think until you experience something like that firsthand, even minorities who haven't experienced something like that, until you experience something like that firsthand, I don't think you have the same level of understanding for those who care very passionately about this issue.

VO: And you know, it's not only that my district is a diverse community, but throughout Texas we have a very large community of immigrants, a very diverse community throughout Texas.

LUCIO: Yes, sir.

VO: So this bill would create large, unintended consequences for many people. And with that, I share with all of you the same concerns.

REPRESENTATIVE NAISHTAT: I know you've known me over the last few years, but you may not realize this—did you know when I first got here, the first time I had ever been in the Capitol was when I was elected, I thought I was Hispanic?

LUCIO: Many do that grow up around here—

NAISHTAT: Until I got here, and obviously I found out that I wasn't. There are some members that have made some comments over the last couple of days. Friday, one member said that only Hispanic businesses were selling insurance to Hispanic people illegally, and that comment went without much notice, but it seemed a little bit biased. There was a comment tonight that 99 percent of law enforcement officers would find out that there's no problem or no issues—people who support this bill. Doesn't it sound like we're doing an awful lot for one percent?

LUCIO: That's right.

NAISHTAT: Now people that look like me, when I found out that I wasn't Hispanic, but when I was surrounded with other people that look like me, would it surprise you that those people would confide in me, assuming that I believed all the same things they did? And I've heard people talk about legislation like this, who look like me, who have last names that don't sound Hispanic, how they believe that things like this are meant to keep the Hispanics, especially the Hispanics, from taking over, is what I've been told. Is that something that you have heard or feel that might be?

LUCIO: You know, I have, unfortunately. I think there is—

NAISHTAT: And I know that a lot of people say that there's no sanctuary cities, so why do we do this? This bill seems to be something extremely divisive in our, not just our body, obviously in the last few days, but do you believe that this may be very divisive and not good for Texas?

LUCIO: You know, I sat on State Affairs last session, and there wasn't a lot of patience for bills like this last time. I guess things have changed.

REPRESENTATIVE DUTTON: There are really two ways to look at this bill. One of them, you can look through the eyes of the people who have spoken before me and see that what's going to happen is, this bill is aimed at the fact that there are too many Mexicans in Texas who people believe are here illegally. There are other people, though, who believe that when they look at this bill, they look at it and suggest that somehow or another, what we're doing is requiring cities to enforce the law. Well members, let me tell you something—we've been trying to outlaw racial profiling in this body for a long time. And all of you from Houston, if you happened to look at the front page of the Houston paper today, you saw what it said—that while black folks make up 23 percent of the people in Houston, they are still 33 percent of the people who are stopped. And that's on the front page of the paper. And let me just add a footnote here, too, to some of my freshman members. Just because you don't like what somebody else has to say, or what they think, you don't have to attack them personally. You don't have to make comments like "grandstanding politicians," particularly when you get up here and you can't name one sanctuary city. That, to me, sounds like grandstanding.

And I don't want to be partisan at this point, but I do want to take you back to something. Let me take you back over 2,000 years ago. Over 2,000 years ago, there was a pharaoh who thought he had too many Israelites within his confines, and so he passed an edict that he was going to kill all of the male babies, that he was going to kill all of them. And yet, they kept being born, and if you read the story, what it tells you about is that the midwives kept going back to the pharaoh because the pharaoh kept complaining because there were too many of them, and he complained that the midwives weren't doing their jobs. But the midwives told the pharaoh that, well, they're having babies so fast that we can't get to them quick enough. And so what the pharaoh did was then increased the number of people that he wanted to kill these babies. Out of that grew the person who led the whole nation out of bondage, and that was Moses. And so, this is not the first time, this is not the first time. Let me give you another book to read, and

sometimes people get offended by this book, but it's a great book. It's a book about the historic perspective of how things develop. The title of the book is *The History of White People*. It's a book written by a Nell Painter. Nell Painter is a black lady who taught at the University of Philadelphia—and just so you don't get offended too much, she's married to an Anglo person. But it's a great book, and it chronicles all of the history of how things got to the point where race became a factor in this country. And it's an interesting book, and I would suggest that all of you who may have the inclination to go and read it.

But this is a bill that bothers me. Most of the people who seem to think, somehow or another, that this bill is going to affect only my brothers and sisters who are Hispanics. Let me tell you, that's not the case. There are Nigerians here in this country. There are Italians here in this country. There are people of all nationalities, particularly in Houston. We have one school in Houston where there are over 86 different countries represented at one school. And so, while this bill purports to be an opportunity to cause the local elected officials to do their job, I'm afraid that that's a smokescreen. That's not what it's about, that's not what it is. And like it or not, all of us here have an obligation, not just to the people on one side of this bill, we have an obligation to the people on the other side of this bill. I had to say to a member that when you come to this body, you know, you leave everything else—you learn to leave it out. And while you may come as a painter, you may come as a lawyer, you may come as a prosecutor, you may come as a former county commissioner—when you get here, there's no higher calling than being a state representative, and you have to represent some of the people that you don't like. Sometimes you may not like them, sometimes they don't look like you, either, but you have to do what you can to make this process fair and it work for everybody in the State of Texas.

There's no point in us being scared, members. If we're scared of anything, we ought to be scared to do what we are doing by suggesting to the people at the local level that they need to do something. If we want to do something, let's tell the federal government what they need to do. That's where the fix ought to be. We've been sending HCRs to Congress to admonish them to do things. We ought to tell them to fix the immigration part of this, and I don't mean fix it by running a whole bunch of people out of this country, but we ought to fix it so that this country, which is a country of immigrants, figures out a way to make sure that we can get the genius out of everybody who's inside these borders. Because, quite frankly, members, I'll take you back to that story 2,000 years ago. Out of all the people that this bill is aimed at, I guarantee you there is a Moses in that group. And Moses doesn't have to look like you and me. It doesn't have to be that. What that person has to do, though, is we have to figure out a way, in this body, to do what a man told me when I first came here, and I went home sad that I couldn't get done any of the things that I wanted to do. And he asked me, well, why couldn't you get things done? And I just want you to know, when I came here, there were 99 Democrats and 51 Republicans. He said, "Well, why didn't you get more things done?" I said, "Well, they had too many white people." He said, "What?" I said, "They had too many white people." He looked at me and said, "Well, let me ask you this. Is there ever going to come a point in time where

you get to decide who comes?" I said, "No." He said, "Well then, you need to learn to work with whoever happens to be there." And I've tried to do that. I've tried to do that. But today, members, I just want you to think about it. And I know the '60s, and I know some of you happen to be a little scared of not being reelected. This is my 14th term. I have never been scared of not getting reelected, never once. I thought when I first got elected that the people made a mistake, and then the second time I thought, well, I made a mistake. But I have come to realize that, look, all of us are required to join hands and minds to make this a better place, in this body first, because when we do that, we can make Texas a better place. But Texas won't ever be a better place if we don't make this a better place in here.

And so one of the things I want to leave you with is, I told you this morning that in Shakespeare's play, you know, where the king goes over and his wife tells him not to leave, and he finally says, "I'm talking about Julius Caesar so you'll get it." And he finally says, "Look, I'm not afraid. Cowards die many deaths, but a valiant man dies only one." Somebody told me, after I left here, that there's some guy in the gallery is keeping a scorecard on people in here. Michael somebody, I don't know him, I've never even heard of him. He can keep a scorecard on me if he wants. I wouldn't care. I imagine there are other people who keep scorecards on me too, and I've never cared about their scorecard. And I would suggest you don't either, because a scorecard imprisons you. A scorecard locks you in to where you cannot be yourself.

REPRESENTATIVE FARRAR: I hope I can make it through this, because I come to share a very personal story. It's about my mom. My mom came here from Mexico. To this day she speaks very broken English. And she was very successful, you know, she started her own business. She learned to speak English. She put herself through beauty school. She taught herself how to drive, and of course none of my aunts from Mexico can drive to this day, and I'll tell you what. She was—I'm sharing this because it's what drives me here. When I was about to run, and when I actually started volunteering, I remembered the experiences of my mom. I remember her coming home one day very humiliated because she had been pulled over by the police. She was driving my dad's car. We were doing a little better then, and he had a nice sedan. It was a Mercury. And anyway, she just happened to be driving at the wrong place at the wrong time. She was pulled over and asked all kinds of questions, and she was so angry because she couldn't defend herself. She couldn't feel like—she's one of the smartest people I know. I mean, talk about somebody with—she is one of the most courageous people I know, too. And let me tell you, she was flustered and humiliated when she came home, and I remember that. And that hurts me to this day. I remember, too, her coming home after having been stopped by security in a department store, and they asked to look in her bag, and you know, those experiences shape you when you're a child. But I never forgot it, and that's why I fight so hard here, because I don't want anyone to ever experience that at all.

And so, I come here, because somebody's going to call the previous question and limit debate pretty soon, and so this might be my only opportunity to share this experience. And I was speaking to drafters of the bill, and they were

frustrated that they weren't able to get this bill passed. And I said, you know, if you are angry and frustrated, can you imagine how this bill feels to many of us who it affects personally? And so I just ask for a moment of your time because it's important. I understand that my colleagues on the other side of the aisle, they have to have this bill. Not for any policy reason, but they have to have it, because they have to respond to a constituency. So that tells me that this is politics, it's not policy. And it also disturbs me very much that we are going to limit debate on something that's so important to the growing population of this state, but we're not going to take the time to debate several really good amendments. I mean, there has been an amendment that has been presented to exclude children. Can you imagine asking children for their documentation? What's the purpose of that? I'm so concerned about children going to school. School is supposed to be a safe place. And now a mother would be concerned, because there are a lot of families that may have a cousin or something that might not be here exactly legally. And so they might be concerned with that family member, and having to disclose the location of that family member should they be apprehended for some reason. There's another amendment that I was going to carry that was going to exclude witnesses and victims of crime, because it's so important that we have input and communication with immigrant communities in order to be able to solve crimes. Domestic violence is a huge issue, and if we're not going to be able to pursue those cases we know that creates a cycle of crime in itself. These are policy debates that need to go on.

I just want to finish with one thing. People said it on the mic and they've said it personally that they're not racist, that there's not a racist bone in their body. But I will tell you that sometimes bigotry isn't just overt. It's not just overt acts. It also can be so much more specious in some ways. It can be so much more damaging when it's done out of omission, because of a failure to understand. And so, I would ask the members of this body, could you do your best to understand? Because while you may not have a personal experience, many of us do, many of your constituents do. I think one thing we all woke up to when we got the census figures back was that our districts are a lot more colorful than we thought they were. And so for all these people, and for all the hardworking people of this state, and those who want to have a future here, I would ask you to reconsider your position on this bill, and I would ask you to support this amendment.

SOLOMONS: I know that this bill is an important bill, whether you're for it or against it, not only in this house but in the State of Texas. I'm going to oppose the amendment because I think it's the right thing to do. I think the people of Texas want us to do something in connection with this. I do think this bill is a prohibition against policies, not a requirement to do anything, and I have four amendments to see if I can make the bill even better, and I'd like for the house to oppose this amendment. I'm going to vote no.

REPRESENTATIVE STRAMA: When you laid this bill out, I know it was a few days ago, but when you laid this bill out the first time, it seemed to me you wanted to emphasize a point about uniformity of practice across the state. Would you like to comment on that?

SOLOMONS: This is a consistent statewide policy about the fact that we didn't want police officers and entities to be picking and choosing and telling their commissioned police officers what they can do or cannot do when someone is legally detained or arrested.

STRAMA: I thought about that a lot and here's what I can't understand. Why is it unacceptable to you that municipalities might have policies with respect to how they handle immigration status?

SOLOMONS: How they what?

STRAMA: Why is it troubling to you that municipalities would have differences in the policies they adopt for their personnel in terms of how they handle immigration status, but it's not troubling that instead you would have differences of practice amongst each individual police officer with no policy, because you've prohibited a policy from being adopted?

SOLOMONS: Well, I think police officers, when they either make a stop or legally detain someone for the investigation of a criminal offense basically use their discretion on a variety of things. I think it's absolutely wrong, and I think there's a number of people in the State of Texas who believe this. A number of members, your colleagues, and my colleagues that believe that we should not have governmental entities making policies on what to enforce and not to enforce in the area of illegal immigration.

STRAMA: But your bill prohibits—

SOLOMONS: It prohibits making policies that interfere with an officer's discretion on this particular subject.

STRAMA: So, it troubles you that there might be differences of policy from one city to another but not differences of practice—

SOLOMONS: We're not requiring officers to ask anything, or to do anything differently than they're doing. We would like for it to be up to them in using their judgement in connection with the enforcement of the law. Basically, not being told by your governmental entities, police chiefs, sheriffs, whoever it is saying you can't ask these particular questions, you can ask everything else, or whatever we tell you, but you cannot ask on this particular issue." And that seems to be a pretty big issue around this state, and around the country, as a matter of fact. But I do think you should not be telling people what to do and not do in connection with law enforcement in this particular area of investigating an offense.

STRAMA: And when you say it's a big issue around this state, there's been some question about whether there are any sanctuary cities in Texas. Or a better way of saying it, since sanctuary cities is a politically labelled term, are there any cities that have a policy—

SOLOMONS: What I said on Friday was that I don't know, and I don't want to make any accusations about any particular city. But the mechanism in this particular bill will allow some of that to be resolved, one way or the other, if a governmental entity has a policy or not.

MENENDEZ: I think the one thing that Chairman Solomons is accurate about is what this is about. It's about us telling our chiefs of police what they can't do with their officers. And I think that Representative Strama hit the nail on the head when he said no longer will any particular chief or sheriff across this great state have the right to impose policies that will somehow interfere with this. Now, where it's really going to get interesting is if a police officer chooses to say, "Well, they were stopped for X amount of time on a particular stop," and they get asked why. Well, they can always invoke this as potential cover. We are providing a license to our police officers to use this bill as a license to ignore anything that their chiefs ask them to do if they are trying to do something else. I understand that I may be talking about the isolated incidents, but you've got to understand we cannot pass policies just to solve a perception, a perceived problem out there. We're going to change dramatically how people feel in this state. So I ask you to please vote for this amendment, because I don't really believe that we're solving a problem. I'm sorry that we're sitting here wasting all this time even discussing this, and I don't understand how this can be, in any way, shape, or form, a state emergency for this great state.

[Amendment No. 2 failed of adoption by Record No. 873.]

[Amendment No. 3 by Solomons was laid before the house.]

SOLOMONS: This amendment exempts hospital districts from the bill, except that it still applies to commissioned peace officers at the hospital. There are specific state and federal citations in this amendment to explain why the bill should not apply to hospital districts. When we had our discussion in the committee, in particular, we talked about school districts, and after we did that we had the hospitals come talk to us and actually sit down with us. And after some research and after some drafting, we narrowed it down to these particular sections that may affect access to health care. And we wanted to ensure that we did not do that similarly as we tried to do with school districts. And in fact, we're going to have an amendment later on to even tighten down school districts a little further, and so this amendment is along those lines. And there are certain federal and state laws that require hospitals to provide care in certain situations to a person regardless of immigration status. And to avoid any conflict with those laws, we listed those out, and we believe this amendment will help that issue about any concerns that the hospital districts have.

LUCIO: Mr. Chairman, so I just want, for legislative intent—again, in hospital districts, the way your amendment would work with the bill itself is that the peace officer at the hospital cannot initiate a line of questioning with someone unless they witness them either in the commission of the crime, or they suspect some type of wrongdoing. They can't just go up to someone in the waiting room and say, "What is your immigration status, sir?"

SOLOMONS: Correct. This is about the lawful detention or an arrest situation, but we don't want to prevent people, whatever status, from coming to the hospital and getting health care. And there are federal statutes, and there are certain state

statutes that deal with that issue. We didn't want to create any concern or conflict with this bill and their statutes that they have to deal with, and that's why we tried to do this.

LUCIO: In order to provide clarity to those who commission peace officers to guard hospital districts, if a hospital district were to adopt a policy that said exactly what you just stated, which is if you are a commissioned peace officer and you are at our hospital, you are not to ask someone their immigration status unless you witness them—

SOLOMONS: Unless you're investigating a crime. Unless you're investigating a crime, and you lawfully have detained that person, or they're under arrest, I suppose, because that's what the bill says. You shouldn't have policies that interfere with that. So, it would seem to me, just as, the same thing with schools, that unless you're investigating a crime, and you've lawfully detained someone, you're not supposed to be walking up to anybody and just ask, "Hey, are you here legally or not?" You know, that sort of thing, and it goes to commissioned police officers. It doesn't go, for this particular amendment, for access to health care.

LUCIO: Okay, so based on what you just said, I'm in a waiting room. There's 10 people in the waiting room. I'm sitting there, and I witness a person assault another person, and for police investigative purposes, I can detain, lawfully detain, for the investigation of a crime, everybody in that waiting room in order to take down statements regarding what happened. So therefore, in that scenario, that commissioned peace officer under the definition you just gave me can question all 10 people about immigration status in that waiting room, not just the person that assaulted the other person.

SOLOMONS: There's nothing in the bill that requires them to do that. You know that.

LUCIO: It doesn't prevent them from doing that either, does it?

SOLOMONS: There's nothing in this bill that requires them to do that.

LUCIO: Right, and this goes right to what—

SOLOMONS: And there's nothing to prohibit them from doing it, either. Let me just clarify this. You know, the issue of health care is pretty important.

LUCIO: I agree.

SOLOMONS: We all want to make sure that the hospital districts don't have conflicts. It's what we tried to do here. But if you're investigating a crime, and you're a commissioned police officer, you shouldn't be told by your superiors that you can't ask a question if it's necessary to the investigation of that crime.

LUCIO: And that goes exactly to what Representative Strama said. We're not going to have consistency on how this is applied, because one police officer may question all 10 people in that waiting room regarding their immigration status, and another officer in another part of the state may just question the person involved in the assault. So when you say uniformity, would it be against the

intent of your bill if someone were to address that in their policy, saying you will only question the immigration status of those directly involved in that crime, and not witnesses to that crime?

SOLOMONS: Why would you do that?

LUCIO: To provide uniformity?

SOLOMONS: Do you not want me to adopt this amendment?

LUCIO: No, I'm just using this as an example.

SOLOMONS: Well, we've talked about the bill and we've debated the bill. You know what the bill does in the context of trying to have some sort of uniform policy around the State of Texas. It basically does not allow for the prohibition of asking if it is necessary to enforce the federal and state laws involving illegal immigration. You know that. And all I'm trying to do is fix this particular issue. If you don't want me to fix this, well, you know, argue against the amendment.

LUCIO: I am trying to provide some clarity as to the intention of your bill, that's all. I'm glad you're accepting this amendment.

SOLOMONS: I understand that you're concerned that there might be several people in a room and the officer says, "I want to know how many people are here legally or not." That has no relevance to the investigation of that crime. On the other hand, we put a certain amount of trust in police officers to investigate crime, and basically if it's an assault—let's say there's a knifing. Let's say someone really got their head bashed in, and people are out there, and there's a number of people. I think the officers are going to be paying attention to the crime. I don't know that illegal immigration is even going to come up. But we don't want policies to basically say that the officers can't—it's taken off the table, if it becomes relevant to them to ask those questions.

LUCIO: Do you think it's important that we're asking the immigration status of those who we assume are committing the crime, or just anybody in the room?

SOLOMONS: The way the bill reads is if you're lawfully detained for the investigation of an offense.

REPRESENTATIVE CASTRO: Representative, this amendment covers hospital districts, is that correct?

SOLOMONS: Yes, it says "this section does not apply to a hospital or hospital district created under Subtitle C or D, Title 4, Health & Safety Code, or a hospital district created under a general or special law authorized by Article X, Texas Constitution."

CASTRO: And I understand you're going to accept an amendment that deals with school districts, is that right?

SOLOMONS: Well, my hope was to get to that point, yes.

CASTRO: Well, can I ask you, looking ahead a little bit, once you accept this amendment, assuming it goes on, and you accept the school district amendment, assuming that goes on, besides the municipal police, and county officials, what districts or special districts are left in the bill?

SOLOMONS: A variety of special districts.

CASTRO: Can you name them?

SOLOMONS: Yeah, I think I could, give me a second. There are a variety of districts that are listed, in fact, in the amendment—apparently people thought there were a number of districts in the amendment that needed to be taken out. It went from everything up and down from special districts, water districts, conservation districts, any districts that would use, I guess, commissioned police officers, and there was a crime committed—

CASTRO: I'll go through them for you. This could include community college district police, is that correct?

SOLOMONS: Well, not junior colleges, if we get to the other—

CASTRO: This would include housing authority police, is that right?

SOLOMONS: Probably.

CASTRO: Conservation district police?

SOLOMONS: Probably.

CASTRO: Groundwater district police?

SOLOMONS: Probably.

CASTRO: MUDs?

SOLOMONS: Probably.

CASTRO: Any of these utility districts that we create?

SOLOMONS: Probably.

CASTRO: Are any of those people trained in any kind of federal immigration law?

SOLOMONS: Are those people trained?

CASTRO: Yeah.

SOLOMONS: Well, we're talking about commissioned police officers. We're not talking about employees. We're not talking about the secretary who works for the whatever officer—

CASTRO: I understand that, but, Burt, are any of those people trained in federal immigration law?

SOLOMONS: Who?

CASTRO: Any of the police officers that work for a utility district?

SOLOMONS: I don't know. Maybe the utility district does do some training. I don't know.

[Amendment No. 3 was adopted.]

[Amendment No. 4 by Solomons was laid before the house.]

SOLOMONS: This is the amendment that you have, and there's umpteen members including myself signing it, a couple times, actually, to ensure that even though we have federal and state laws dealing with profiling, that we put a section in the bill itself that says, "An entity described by Subsection (a) or a person employed by or otherwise under the direction or control of the entity may not consider race, color, language, or national origin while enforcing the laws described by Subsection (c) except to the extent permitted by the United States Constitution or the Texas Constitution." This amendment is acceptable to the author.

[Amendment No. 4 was adopted.]

[Amendment No. 5 by Solomons was laid before the house.]

CASTRO: Mr. Solomons, on that racial profiling amendment that was signed by 40 or 50 legislators—

SOLOMONS: I didn't count them all—both democrats and republicans—

CASTRO: There were many legislators that signed onto the amendment, right?

SOLOMONS: Yes, sir.

CASTRO: Is there a penalty if an officer violates that racial profiling provision? Is there a penalty built into the amendment?

SOLOMONS: Not into the amendment itself.

CASTRO: So, I guess this is my question then, what's the teeth to that amendment?

SOLOMONS: The laws already on the books about racial profiling.

CASTRO: And what are those?

SOLOMONS: There are federal and state laws.

CASTRO: What are they?

SOLOMONS: Specifically, I couldn't give you the cite numbers right now.

CASTRO: So, you don't know what the penalty is for violation of that policy?

SOLOMONS: I assume they can be sanctioned, possibly even criminal offenses brought against them, but I don't have the citations in front of me right now.

CASTRO: But, as far as you know, there could be no penalties, is that right?

SOLOMONS: No penalties for what?

CASTRO: For violating that racial profiling bill.

SOLOMONS: I believe that there are penalties built into federal and state law.

CASTRO: You believe that there are, or you know that there are?

SOLOMONS: Oh, I know that there are. I can't give you the cites right now. And I think you might already be aware of some of those.

CASTRO: I'm not, that's why I'm asking the question.

SOLOMONS: I'm just telling you there's not—you asked me a question. I answered your question, and I will tell you that federal law and state law have penalties involving racial profiling, sanctions to be had, in some cases it could be civil, in some cases it might be criminal.

CASTRO: Well, the reason I asked the question is because many of us really want to know if there's actually any teeth to that amendment, or whether it's just something we're going put down on paper.

SOLOMONS: Well I think it goes to the intent of the bill, in particular, plus it's pretty clear that we're trying to reiterate that we expect those statutes to be upheld.

REPRESENTATIVE EILAND: Mr. Solomons, can you help me understand on the school amendment and the language in the bill so that I will know how it will work? Many of our school districts use—

SOLOMONS: Am I actually on the school amendment now?

EILAND: Yes.

SOLOMONS: Okay, so the school amendment that we now have before us?

EILAND: Yes.

SOLOMONS: Well, I think that Mr. Hochberg, and Mr. Eissler, and Mr. Hancock, and Mr. Huberty may have a little bit more to say about it, but it goes to the issue that was brought up about releasing information contained in educational records as it deals with FERPA, which is Family Educational Rights and Privacy Act of 1974. There was a lot of concern in discussions this afternoon about trying to ensure that that was another issue. When we originally had the bill in committee, Mr. Oliveira, rightly so, and a couple of other members, brought up the issues in schools, and asked me to hold the bill, make sure I was trying to do that. I had talked to a school attorney that specializes in that kind of law, and suggested the language that we use in the bill itself. Since that time, we put that in the bill in the committee substitute. We brought it to committee. The committee passed it out. Since that time, no one else has come to talk to me about school issues, but when we got the bill on the calendar, then it came up that oh my goodness, we actually have the bill on the calendar, and so some school districts were talking to members. Obviously there's more than one school attorney that specializes in that and had suggested that this might be a problem. Mr. Hochberg was more familiar with it, and some others, and brought that to us. We tried to fix that this afternoon, and that's why we've done the amendment.

EILAND: Okay, so here's my question. Because we know that our school districts—many of our school districts contract with the local sheriff's department or police agency, the city police, or county sheriff to be their school police. And if they go out on a truancy, so the child's not come to school, and the school says okay, go out and see what's the deal, bring the kid, and get them back in school. If they go out to the child's home, they would be there on I think it's a misdemeanor, I don't know what it is on a truancy charge, would they be able—

SOLOMONS: Is there actually a truancy charge in your hypothetical, or they're just asking people to go out and try to round up kids and get them back in the school?

EILAND: Right, when they do that, would they be able to ask or inquire of the immigration status of the parents?

SOLOMONS: If it's reached the level of the possibility of being a crime. What we're trying to say is that particular part, the commissioned police officer, in the investigation of a crime—not necessarily trying to get a kid back in school. "Hey, how come you're not in school at this moment?" And just trying to get them back in there, I don't know the bill applies to that or policy applies to that. If it's reached the level of a commissioned peace officer investigating a crime of truancy and what all goes into that, I would think that if that became relevant to the investigation, I suppose they could if we pass this bill, and not have a policy that prohibits them from asking.

[Amendment No. 6 by Oliveira to Amendment No. 5 was laid before the house.]

[Amendment No. 6 was withdrawn.]

HOCHBERG: We're going to have the discussion, but we're going to do it separately. So this amendment, which is agreed to, that clarifies that a school district—that nothing in this bill will conflict with a school district's obligation under the federal student record privacy act—that we get that amendment on, and then we'll go on down the road and have the discussion about Mr. Huberty, Mr. Pitts, and Mr. Oliveira's amendment. So I move adoption of the amendment that's before you, without the amendment to the amendment, and it's acceptable to the author. I move adoption.

[Amendment No. 5 was adopted.]

[Amendment No. 7 by Solomons was laid before the house.]

SOLOMONS: I'll yield to Mr. Gutierrez.

GUTIERREZ: You know, sometimes we do bills to try to make them better. Obviously, I think I have made it very clear that I am not for this particular piece of legislation. I put together this amendment because I felt that it was only fair that DPS follow the same law, and the reason for that was that my city has particularly said that this is an unfunded mandate. I think that we all need to understand that this is an unfunded mandate. We are going to have our law enforcement officers doing ICE duties. And so, when I put this amendment together, I felt that if folks in our cities needed some help, we needed to have DPS do some cover, well then, that's what they should be for. But after having some thought over the last 24 hours about this particular amendment, you know, I'm not so sure that I want DPS to go out there and do harm to my people, you know, and add another law enforcement agency doing harm to the people. So the reason for this amendment was to show—this particular piece of legislation shows that there is no fiscal impact to the State of Texas. That is disingenuous. There is fiscal impact to every one of the major cities in this state. There is a

fiscal impact to DPS if you accept this amendment. At this time, I withdraw my amendment, and if Mr. Solomons thinks it's such a good idea to continue forward, I'm going to let him do it on his own.

SOLOMONS: Since Mr. Gutierrez brought this to us, and apparently he doesn't want to do it now—and I was willing to take it—but now that he apparently decided that it's not worthwhile, I am going to—

GUTIERREZ: Burt, you understand that your legislation says that there is no fiscal impact, correct?

SOLOMONS: I think that's what the fiscal note says.

GUTIERREZ: The fiscal note says that there's no fiscal impact. You understand that Bexar County and the city of San Antonio have suggested that there's a fiscal impact to their communities?

SOLOMONS: I think all the cities who say they are not sanctuary or they don't have policies all have issues with the bill. And they say that there's going to be fiscal implications, but they all say they're not sanctuary anyway, but yes, I understand where you're coming from.

GUTIERREZ: Well you know that there are no sanctuary cities, you haven't pointed out one, so I mean, I don't understand.

SOLOMONS: Let me just tell you this. I've been pretty polite about it, and I'm not going to accuse any city of having policies, but there is a general perception in the State of Texas that a variety of cities have this. So what I try to do is provide a mechanism where, if someone really does believe that and they have evidence of that, that they can go through this process. But I'm going to withdraw the amendment, and I'm yielding the floor.

[Amendment No. 7 was withdrawn.]

[Amendment No. 8 by Huberty was laid before the house.]

REPRESENTATIVE HUBERTY: We've heard a lot of debate tonight on this particular topic, and I sat in the committee and listened to this piece of legislation. I got a call from my superintendent today, and he was talking to me about having the school districts in here. What this amendment does is it takes ISDs that have police departments out of this legislation, similar to what we did for the hospital districts. The primary purpose of this is that we believe that there's a conflict in federal law and state law would be created. In 1975, actually, the Texas Legislature passed legislation that suggested that children that were illegal, or proven to be illegal would not be funded, and then there was a lawsuit. In that lawsuit, the supreme court came back and said, "No, that's not the case, you can't ask, relative to a minor child, what their status is." In fact, I had some people back home who wanted to file legislation collecting data on how many illegal immigrants were in our schools, and my response was I understand the purpose of you asking for that, but we're not going to do anything with the data. We're not going to move that forward, and it was something that was easily explainable.

This is obviously a little bit different. If you contract your police department, it's not going to put your school district in the same position as it will if you have your police department that is under your care, custody, and control. And the issue really is that ISDs, the independent school districts, do not ask, and they don't require—they do not allow their employees to ask whether those children are legal or illegal. And what happens is, because the chief of police works for the superintendent, and the police officers work for the chief of police, they are all independent school district employees, and so you'd have a conflicting document. And so we believe that this could create some problems relative to collection of, obviously, federal dollars, and state dollars at the same time. And so while I understand Representative Hochberg's cleanup document for FERPA, which is very important—

OLIVEIRA: Representative Huberty, the original amendment we were going to offer was offered by you, me, Representative Diane Patrick, Representative Rob Eissler, Representative Jim Pitts, and Representative Peña, who are all in favor of this amendment. Is that correct?

HUBERTY: Yes, sir.

OLIVEIRA: All right, and our concern is this—the United States Supreme Court has told school districts that they cannot inquire into the immigration status of children. And what we heard in committee—and Representative Solomons made an effort, a good faith effort to, on school districts, to just limit it to their licensed peace officers or commissioned officers. But what we found out is since, under the Education Code, Section 37.081, those are school district employees, they will now be doing something unconstitutional and illegal if they inquire about immigration status. Is that right?

HUBERTY: Yes, sir.

OLIVEIRA: And in fact, the Texas Association of School Boards has in their manual—it specifically, today, instructs school districts that they cannot make the inquiry into immigration status because of the supreme court decision and because of federal law. Is that right?

HUBERTY: That's right.

OLIVEIRA: And we've tried to work with Chairman Solomons and really eliminate school districts altogether because they are separate, and they're caught in the proverbial rock and a hard place, correct?

HUBERTY: Yes, sir.

OLIVEIRA: In fact, the sanction here, if a school district would allow its employees, peace officers, to ask immigration status of children, the sanction is they lose all their state funding. Is that not correct?

HUBERTY: That's correct.

OLIVEIRA: And so what we'd be looking at is if any of our school districts decided to follow—and, again, they're in a tough spot. Do they follow the United States Supreme Court, or do they follow this bill and risk losing their state funding?

HUBERTY: That's right. And in talking with Chairman Solomons before we brought this up, I think, you know, we want to find the right language that makes sense. That—obviously, I'm very supportive of the bill and the intent of it. We're moving forward with this, but I also want to make sure that we're doing the right thing, because there's about 100 or so of these school districts that are impacted by this. The chairman did include language that really exempted about 1,100 other school districts, except for these particular districts that have these commissioned officers that are really ISD employees.

OLIVEIRA: And so any member in a relatively urban area, or even suburban area, where they have a school police force, runs the risk now, under this bill, of losing their state funding. And that's why Chairman Eissler, and you, and Chairman Pitts, and myself, and Representative Patrick, and Representative Peña, and others have said please take our school districts out so they're not put in this Hopson's choice of either violating the United States Constitution or violating Burt's bill.

HUBERTY: Yes, sir.

OLIVEIRA: All right. Now, under the Education Code, as we discussed already, even if you contract with somebody, those people may be considered employees because they are working for the district and in furtherance of the district's mission.

HUBERTY: Possibly, I'm not sure. If they're contracted out, we'd have to look at how their contract would be structured and everything else, I couldn't—

OLIVEIRA: Well, and I think you looked up earlier, or mentioned a number, that there are about 178 districts that have their own police force, is that right?

HUBERTY: That's about right.

OLIVEIRA: So the problem here really is—for our schools—is they need to be taken out of this. Because even if you take out school board members, and you take out teachers, and you take out secretaries and everybody else, unless you take out the campus police, you're going to be in violation, and you're going to subject your school district to multiple lawsuits, both sides, and losing both ways.

HUBERTY: That's correct.

OLIVEIRA: Well, thank you for joining me in this amendment, and joining Representative Pitts, Representative Eissler, and I believe we have Representative Hochberg with us as well, and Representative Patrick, and others.

REPRESENTATIVE RODRIGUEZ: Dan, you mentioned 100 school districts that would be affected by this amendment, is that right?

HUBERTY: Over 100, yes, about 178—

RODRIGUEZ: And I think this is a good amendment, I'm going to support it, but how many school districts are there in the State of Texas?

HUBERTY: Including charter schools, over 1,200.

RODRIGUEZ: Okay, so there's a lot of schools that this wouldn't necessarily cover. I guess my question to you is this—there are some schools that actually hire police departments, and then the police department sends officers to those schools—aren't employees of the school district, they're still employees of the police force, is that correct?

HUBERTY: That's correct.

RODRIGUEZ: And I think Craig Eiland mentioned this before—so, what's going to happen with those officers, then? What if there's a truancy issue or something like that, and that officer—who is not an employee of the school district, but is an employee of the police force—goes into a school. If that officer then may be obligated or feels the need to question the parents about their citizenship, or maybe even a student, what happens at that point?

HUBERTY: Potentially, he could, yes. But because they're contracted out in separate employment agreements and separate employment statuses, it's viewed in a separate arena. So, for example, my school district has its own commissioned police force, however, when there are incidents above and beyond—felony situations, things of that nature—the sheriff's office or the local police department will come and get involved, and then they supersede what our police force does.

RODRIGUEZ: And again, I think you have a good amendment, I'm with you on this. I'm saying there seems to be a lot of school districts that may—you know, you're not going to have consistency around the state, and that could be problematic.

HUBERTY: Well, Chairman Solomons had put into the agreement that it excludes all other school districts. I think that you can interpret it excludes all other school districts unless they have a commissioned police force. So I think you have to take it on face value that those districts would be excluded from the implementation of this. But what we're trying to focus on are these school districts that have the commissioned police officers right now underneath them, making sure that there's no interpretation—

RODRIGUEZ: Well, I'm going to ask the chairman, just to confirm all that, but thank you very much.

REPRESENTATIVE PATRICK: Thank you, Representative Huberty, for this amendment. I think it's important that the schools have the ability to educate students, and I think your amendment helps with that. But one clarification—you allude to this in your previous statement—has to do with school districts being required, currently under Texas law, to report serious offenses to city or county law enforcement. And as such, the local law enforcement will be able to inquire into immigration status as needed. And does your amendment interfere with that local law enforcement's ability to do that should a serious crime be reported by the school district?

HUBERTY: Not at all. No, ma'am, no. In fact, Chairman Oliveira and myself talked about that in that, if there was some action by a child, and the local police then get involved—because that's what happens. A typical police force, ISD police force, will detain, and the overriding police force, sheriff's office, constable's office, or local police department comes in and then takes care, custody, and control of that child. That then becomes their issue that they'll deal with, and they'll enforce the intent of the language in the law. Right now, we just believe that because of the conflicting information that we have in there, we just want to be so diligent, specifically with the things we've been dealing with in schools. We're very concerned about what's happening, obviously. We're about to hear another bill coming up here shortly specifically related to funding. We want to make sure that we're giving them every opportunity, and we just want to make sure that these 178 schools that were not carved out are part of the process.

SOLOMONS: Representative Huberty is well-meaning in his amendment, so is Chairman Oliveira. However, when we had this discussion, we specifically put in language based on what an attorney told us to do, which was dealing with a school district. And we said this section does not apply to a school district, or an open enrollment charter school, or a junior college district "except that this subsection does not exclude the application of this section to a commissioned peace officer employed or commissioned by a school district, open enrollment charter school, or junior college district." I do know that federal law, for example, doesn't allow its employees or officials from sharing immigration information, or dealing with the instances of criminal aspects involving immigration status, lawful or unlawful, of any individual. It seems to me that I have one attorney that says this is all we need, I have another attorney that says we really need to do more. And at the end of the day, peace officers, wherever they're employed, should be treated the same under this law.

I want to get the amendment—I want to get something done correctly if we need more, but I don't know that this is the right amendment to do that by just taking them out. It may be, I don't know. But if we put it in and it's wrong, it's going to hurt the bill. So I would prefer—I'm going to move to table this amendment. I'm going to say that we have satisfactory evidence in the bill. If we need more, we will continue to work on it, but I don't want to do it this way if I don't have to. And I believe that right now, we have a pretty good bill. Besides that, it's an illegal argument whether we really do need to do more. For example, the issue of commissioned peace officers being employees, well, they're also commissioned peace officers. They've taken an oath to uphold the law. And how you balance all that, I don't know. Maybe we're going to need a court to finally determine that. Maybe we're going to need the attorney general to decide. But I don't know that ought to do this by this amendment, and I'm going to move to table.

OLIVEIRA: This is a very, very, very important amendment. In 1982, the United States Supreme Court decided, crystal clear. I even shared this with Mr. Aliseda, and he agreed that the opinion was a problem or an issue, he understood, he said, where I was coming from. We tried to do this in committee, and I couldn't convince Representative Solomons. He did give us maybe half a loaf of bread by

taking out school boards and teachers and everybody else. But the problem is, under our Education Code, your campus police—and there are 178 very, very large school districts, and small and medium, that have some security or have campus police. The United States Supreme Court said that it was unconstitutional for a school district to inquire about the status of a child. We may not like that opinion, but it's the law of the land. It's been the law of the land since 1982 by the United States Supreme Court. So, in the Texas Association of School Boards manual that exists today, the Texas Association of School Boards instructs school districts to not make this inquiry so that they won't be subject to litigation.

The problem with the policy that Burt is trying to do, he's trying to do a one size fits all, including school districts and it doesn't fit. I discussed this with some of you today, and the original amendment, as I said in questions to Representative Huberty, was authored by Representative Pitts, Chairman Eissler, Representative Patrick, Representative Peña, myself, and Representative Huberty. It is to take out the police forces of school districts so that school districts won't get sued. They cannot make this inquiry, members, whether we want them to or not. That's my point. You may very well want them to, but the feds, and the supreme court has said you cannot do it.

What is the sanction in Representative Solomons' bill? The sanction in Representative Solomons bill is that you lose all your state funding. Think of your school districts losing all their state funding. That will close down the districts for maybe—you know, maybe there's a few thousand children there that are undocumented. My school district in Brownsville probably has a few thousand undocumented children, but the supreme court said whether we like it or not, we have to educate them. I think it's probably a good policy, but that doesn't matter. It is the law of the land. What Representative Solomons's bill does—

MENENDEZ: Chairman Oliveira, just so that the body is clear, even if the school district did not ask—is it not true in the bill that someone can file a complaint and say the school district has a policy against asking, but they're not enforcing it, and someone can file a complaint? Is that not true?

OLIVEIRA: Well, you'll remember in the debate on Saturday that Representative Solomons said that it can be a policy, it can be an ordinance, it can be not doing something, the omission, if you will, of doing something. And the problem here is, forget about all the other arguments earlier in the day that we talked about, this is your school district, and your school district can lose its state funding.

MENENDEZ: So if one person were to complain, in any one of our school districts, and the AG finds that it's true, that they had this silent policy against doing this, and they could prove it, then any one of our school districts could be at risk of losing all of its funding from the state.

OLIVEIRA: Exactly right. And whether it's a silent policy or it's an affirmative policy, because as an affirmative policy right now with the Texas Association of School Boards, it's an affirmative policy with the United States Supreme Court, so it is a policy that's going to be in violation of this bill. And I urge you,

members, do not vote to table. Do not vote to table and subject your school districts that have campus police—subject them to having to try to choose, make this Hopson's choice by either enforcing Burt's law or enforcing the law of the United States Supreme Court. It is a very dangerous place to put our school districts, and it is inviting a lot of litigation, a lot of litigation. School districts do not belong in this bill. They have a separate and unique situation, and I urge you to please, please not vote to table.

MENENDEZ: Chairman Oliveira, by not choosing to carve out the school districts, then we can open them up to litigation by both sides—those who are in favor of this bill, and those who are opposed to this bill. Is that not true?

OLIVEIRA: Well the first child, the first 10-year-old that is asked, in some incident in the school yard—two kids bump each other and campus police shows up and starts investigating it as a potential crime, and the first child is asked, "Does your mommy have a green card? Are you here legally? Is your mommy here legally? Is your daddy here legally?" That's going to invite the litigation, and school districts will get pounded. And you're talking about losing a lot of money that, right now, we know they're not going to have. Please vote no on the motion to table.

[Amendment No. 8 was tabled by Record No. 874.]

SOLOMONS: We've been here almost three hours tonight. We've worked on this bill with members all afternoon since it came up, then we postponed. We had some points of order, we had some amendments and debate Friday afternoon. So it's been a little over 10 hours that this bill has been in front of you on the floor for consideration, and I'm going to move the previous question.

REPRESENTATIVE ANCHIA: Mr. Speaker, parliamentary inquiry. If Mr. Solomons has moved the previous question, it's my understanding that that ends all debate, including closing speeches, is that correct?

SPEAKER STRAUS: Mr. Anchia, after we determine the 25 seconds for the motion, there will be a three-minute pro and con debate.

ANCHIA: So there is one three-minute speech for and against the motion?

SPEAKER: On the motion, yes.

ANCHIA: On the motion. But there are no closing speeches, is that correct?

SPEAKER: Pursuant to Section 33, the mover shall have the right to close the debate.

ANCHIA: One more time? I couldn't hear the response, Mr. Speaker, I'm sorry.

SPEAKER: The mover will have the right to close the debate.

ANCHIA: Okay, so there will be no more—so I'll ask my question again—there will be no closing speeches if this motion is adopted, is that correct?

SPEAKER: That's right. Mr. Solomons will have the right to close.

ANCHIA: Okay, and Mr. Speaker, parliamentary inquiry—this motion requires 25 seconds, is that correct?

SPEAKER: That's correct.

DUTTON: Mr. Speaker, parliamentary inquiry—is this a privileged motion?

SPEAKER: The motion has been made and seconded.

DUTTON: My question, though, is you have to recognize him for the motion, do you not?

SPEAKER: He was recognized for the motion.

DUTTON: Okay. And that's a choice that the speaker could make. Mr. Speaker, parliamentary inquiry—do you know why, with that many signatures, there is an attempt to eliminate any further debate on this bill?

SPEAKER: Mr. Dutton, you'll have to ask the seconders, the ones who signed.

DUTTON: Well I'd like to ask Mr. Solomons, since he's sort of the leader of this gang.

SPEAKER: Mr. Solomons—there will be a three-minute pro and con debate on the motion.

DUTTON: Well I just wanted to know—it's rather unusual that in a democratic body, debate is restrained in any way. And one of the things I have always felt were, at least the tenants of something that was good around here, was the idea that we had free speech, open debate, and democracy. But if we're going to now suggest that if you have the votes, you don't have to entertain any further discussion on a bill, I think that's a bad precedent, Mr. Speaker.

SPEAKER: Thank you, Mr. Dutton. We will begin the three-minute pro and con debate.

SOLOMONS: Thank you. Mr. Speaker and members—

DUTTON: Will the gentleman yield?

SOLOMONS: No, I won't.

DUTTON: Did he say he would or he wouldn't?

SOLOMONS: I said no.

DUTTON: So he doesn't want to yield and he doesn't want any discussion on this bill, Mr. Speaker?

SPEAKER: Mr. Solomons does not yield at this time.

REPRESENTATIVE TURNER: Parliamentary inquiry, Mr. Speaker, before Mr. Solomons gets started. Just to understand where we are going from here—I certainly do not question the right to exercise the previous question. It is in the rules. But my question is to the chair. Is this the intended course that the chair intends to exercise on bills as we proceed?

SPEAKER: No, it is not.

TURNER: And the reason why I ask, Mr. Speaker, is that previous question, though authorized in the rules, is very seldom used by the Texas House. I do not question the speaker's right to recognize a speaker on the motion. But as we move forward, so that we will all know—and so that we will not be expending a great deal of time studying bills, staying up at night, having our staff work—is it the speaker's, the chair's intent, whether it's **HB 400** or any other bill to come before this house, is it the chair's intent to recognize any member for a previous question and to move forward? I simply want to know the direction.

SPEAKER: Mr. Turner, it is the speaker's intent, the chair's intent to take each bill one at a time.

TURNER: Well, the reason why I ask is—Mr. Speaker, parliamentary inquiry. Again, I do not question the chair's right, or any members, or 25-plus, to do this. But I do think it is important, if this is the course that the house chooses to pursue, then what I would ask, Mr. Speaker, is that if the chair, along with the super majority, if they will simply let the rest of us know which bills they intend to have. Regardless of points of order, regardless of debate, regardless of whatever discussion there may be, if they will simply let us know which bills they intend to have, regardless of anything else, it will save a lot of us a lot of time, a lot of effort, and a lot of debate. It is no question that the super majority can pass any bill at any time.

SPEAKER: Thank you, Mr. Turner.

DUTTON: Mr. Speaker, parliamentary inquiry—how many amendments do we have up there that would be cut off if this motion survives?

SPEAKER: Mr. Dutton, they're listed in your system, the chair is not advised of the number.

DUTTON: I didn't understand your—

SPEAKER: I'm told there are about 30 amendments. They are listed in your system.

DUTTON: And so this motion would essentially cut off those amendments?

SPEAKER: The motion of the previous question, which has been seconded—

DUTTON: That would cut off these amendments if that prevails, is that right?

SPEAKER: Mr. Dutton, it does end the debate.

DUTTON: And that means you cut off these amendments.

SPEAKER: Yes, it moves to a vote.

DUTTON: Mr. Speaker, parliamentary inquiry, and I guess this is a follow-up to the previous question. Is this the sine die for the rest of us? If it is, it's okay, I just want to know that my session was short by 21 days.

SPEAKER: Mr. Dutton, we're in the middle of a three-minute pro and con debate.

DUTTON: Yeah, Mr. Speaker, we're in more than the middle of that.

SOLOMONS: As I said before, I think that we've had a number of people speak about this bill. We've had this bill before this body for well over 10 hours in one form or another, by amendments, by speeches, by points of order, and we still are—as Mr. Branch reminds me—we'll still have the bill on third reading. But at the end of the day, I do think that, it's now whatever time it is, 11:35, we started this this afternoon. We had most of the day, or most of the afternoon, over five hours, almost five and a half hours on Friday—I do think it's appropriate now to move on, and we'll move to third reading, hopefully. And it'll go to the senate, hopefully, and we'll see what happens with the bill. And that's why I made the motion. I do think the process has been—we've had the process, and I ask you to agree with me on this particular issue, which is the motion for the previous question.

REPRESENTATIVE BURNAM: Representative Solomons, I'm not sure how aware you are of history in the United States and the post-World War II period, but are you familiar with the filibuster used by Southern Democrats in opposition to the Civil Rights Movement in the U.S. Congress?

SOLOMONS: Not in detail, but I'm aware of it.

BURNAM: But you're aware of that?

SOLOMONS: Yeah, I was a history minor—one of my minors.

BURNAM: Pardon?

SOLOMONS: One of my minors.

BURNAM: So you're aware that it was a tool that was used to prevent the Civil Rights Movement from being able to move forward?

SOLOMONS: Do you remember the years?

BURNAM: Approximately the '50s and the early '60s.

SOLOMONS: Yeah, okay.

BURNAM: But you're not going to allow us the opportunity to filibuster against one of the most overtly racist pieces of legislation that I have seen in almost 15 years of serving the Texas Legislature, are you?

SOLOMONS: Well, that's your opinion of what the bill is.

BURNAM: Well, that is my opinion. My opinion, as I said at the immigrants' rights rally back in early February, is this is the most overtly and most obviously racist session of the Texas Legislature in almost 15 years, and I regret your cutting off of the debate.

REPRESENTATIVE GALLEGOS: I appreciate the opportunity to share a couple of thoughts on the motion. I will tell you, when I nominated, or seconded the nomination of Speaker Straus, I talked to you in terms of my little boy and the fact that hopefully—I hope he gets the chance to serve here one day. But I want him to learn lessons. And the lessons that I want him to learn are not when you're tired, we should go on, we should cut off debate—we should cut off debate in a way, in a time, on a bill where people are still passionate, and that's so important.

We had several hours of robust conversation on a bill just a little while ago by Mr. Taylor where there were 21 amendments, 16 of them by republicans, the remainder by democrats. And yet, we went through the process respectfully, and nobody moved the previous question.

As memory serves, during the entire time that Pete Laney was speaker, there were probably two motions, two motions in 10 years, to move the previous question. I believe during Speaker Craddick's tenure, there was one or two over years, and yet, in the course of two or three days, we've had two motions to move the previous question. Two motions that didn't take place over essentially—what was that 16, 18 years of history? The process, to me, is fundamental. Party, partisan, policy—all of that stuff is not as important as place. And place to me is the institution, and the example that we set for the folks who follow us. For some of us, that may be a son or a daughter. Susan McBee, from Del Rio, served after her mother did. It's possible.

But look at the example that you want to set, because the truth is that to pass this bill, the votes are there, without cutting off the debate, and giving people an opportunity to be fully heard so that their venting their frustrations, and that of the people they represent, can be fully aired and fully heard. I understand that at the end of the day, this bill passes, and I understand that at the end of the day, it's important to all people. But you know what? The respect tonight, the debate tonight has been sincere and straightforward. And out of respect for colleagues, out of respect for the process, and just as importantly, out of respect for the place that we serve in, and the institution that I have learned to love, we really should give people an opportunity to fully vent, to fully talk, to fully discuss, and to fully debate. Over three days, we have set an example that hadn't been set in 16 or 18 years. And what does that say to the people of Texas, to our sons, to our daughters, to our successors? What does that say about us? Think about that, because I think it is really important, whether you're for this bill or against this bill, it should be for the process, because fundamentally, the process is what protects every single one of us as individual members. The process is what protects every single one of those 160,000 or so people that you and I represent. The process is tremendously important, and when you step on it, or you damage it, or you dent it, or you destroy it, you send entirely the wrong message to folks who will serve. You open entirely the wrong the door for others to walk through. And that damage can be very, very, very long-lasting.

So think about this, because I for one have been very gratified by the debate that we've had tonight. It's been respectful, it's been sincere, it has not been loud or obnoxious, it's been from the heart. And when you cut off people's hearts and you cut off people's feelings, that's not what the process is about. And fundamentally, that's never been what the house has been about. The house has always been about robust debate. The senate, that's a different story, but here in the house, we've always given each other a chance, and I ask you for that chance this evening. Please vote no.

[The motion for the previous question prevailed by Record No. 875.]

SOLOMONS: I know this has been emotional for everybody. I do think it's a good bill, if we're going to have a bill like this, and I think it's necessary in the State of Texas, and I close.

[**CSHB 12**, as amended, was passed to engrossment by Record No. 876.]

